

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 400

CONSOLIDATED ROCK PRODUCTS CO., AND EDWARD E. HATCH AND LOUIS VAN GELDER, COMPOSING THE PREFERRED STOCKHOLDERS COMMITTEE OF CONSOLIDATED ROCK PRODUCTS CO., PETITIONERS,

vs.

E. BLOIS DU BOIS

No. 444

F. D. BADGLEY, COLONEL R. E. FRITH, T. FENTON KNIGHT AND WALTER S. TAYLOR, COMPOSING THE UNION ROCK COMPANY BONDHOLDERS' PROTECTIVE COMMITTEE, ET AL., PETITIONERS,

vs.

E. BLOIS DU BOIS

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED { SEPTEMBER 6, 1940.
SEPTEMBER 18, 1940.

CERTIORARI GRANTED OCTOBER 28, 1940.

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**In the United States
Circuit Court of Appeals
For the Ninth Circuit.**

In the Matter of

CONSOLIDATED ROCK PRODUCTS CO., a Delaware corporation,
Debtor,

UNION ROCK COMPANY, a corporation,

Subsidiary,

and

CONSUMERS ROCK & GRAVEL COMPANY, INC., a corporation,
Subsidiary.

E. BLOIS DU BOIS, an objecting bondholder of record to the Plan of
Reorganization,

Appellant,

vs.

CONSOLIDATED ROCK PRODUCTS CO., a corporation; F. B. BADG-
LEY, COLONEL R. E. FRITH, T. FENTON KNIGHT, and WAE-
TER S. TAYLOR, composing the Union Rock Company Bondholders'
Protective Committee; WM. D. COURTRIGHT, FRED L. DREHER,
F. J. GAY and GUY WITTER, composing the Consumers Rock and
Gravel Company, Inc. Bondholders' Protective Committee; and EDWARD
E. HATCH and LOUIS VAN GELDER, composing the Preferred Stock-
holders Committee of Consolidated Rock Products Co.,

Appellees.

Transcript of Record

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Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in *italics*; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italics* the two words between which the omission seems to occur.]

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For Appellee Consolidated Rock Products Co.:

LATHAM, WATKINS & BOUCHARD, Esqs.,

PAUL R. WATKINS, Esq.,

411 West Fifth Street,

Los Angeles, California.

UNITED STATES OF AMERICA, ss.

To Consolidated Rock Products Co., a corporation; F. B. Badgley, Colonel R. E. Frith, T. Fenton Knight and Walter S. Taylor, composing the Union Rock Company Bondholders' Protective Committee; Wm. D. Courtright, Fred L. Dreher, F. J. Gay and Guy Witter, composing the Consumers Rock and Gravel Company, Inc. Bondholders' Protective Committee; and Edward E. Hatch and Louis Van Gelder, composing the Preferred Stockholders Committee of Consolidated Rock Products Co.,

GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 3rd day of November, A. D. 1938, pursuant to an order allowing appeal filed on Oct. 4, 1938, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 25816-H, Central Division, wherein E. Blois duBois, an objecting bondholder of record to the Plan of Reorganization confirmed in said cause, is appellant and you are appellees to show cause, if any there be, why the decree, order of judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, The Honorable Harry A. Hollzer, United States District Judge for the Southern District of California, this 4th day of October, A. D. 1938, and of the Independence of the United States, the one hundred and sixty third.

H. A. Hollzer

U. S. District Judge for the Southern District
of California.

Service of a copy of the foregoing Citation, together with Copies of the Order Allowing Appeal, Petition for Leave to Appeal and Assignment of Errors is acknowledged this 8th day of October, 1938.

O'MELVENY, TULLER & MYERS,

By Milton A. Taylor

Attorneys for F. B. Badgley, Colonel R. E. Frith, T. Fenton Knight and Walter S. Taylor, composing the Union Rock Company Bondholders Protective Committee.

GIBSON, DUNN & CRUTCHER,

By.....

Attorneys for Wm. D. Courtright, Fred L. Dreher, F. J. Gay and Guy Witter, composing the Consumers Rock and Gravel Company, Inc. Bondholders' Protective Committee.

Received copy of the within documents. Oct 8 1938

GIBSON, DUNN & CRUTCHER

Per I. J.

Received copy 10/8/38

Stanley Arndt

B

STANLEY ARNDT

Attorney for Edward E. Hatch and Louis Van Gelder, composing the Preferred Stockholders Committee of Consolidated Rock Products Co.

LATHAM, WATKINS & BOUCHARD

By D. C. Worley

Attorneys for Consolidated Rock Products Co.

[Endorsed]: Filed R. S. Zimmerman, Clerk, at 16 min. past 12 o'clock Oct. 11, 1938 A. M. By M. J. Sommer, Deputy Clerk.

UNITED STATES OF AMERICA, ss.

TO Consolidated Rock Products Co., a corporation; F. B. Badgley, Colonel R. E. Frith, T. Fenton Knight and Walter S. Taylor, composing the Union Rock Company Bondholders' Protective Committee; Wm. D. Courtright, Fred L. Dreher, F. J. Gay and Guy Witter, composing the Consumers Rock and Gravel Company, Inc. Bondholders' Protective Committee; and Edward E. Hatch and Louis Van Gelder, composing the Preferred Stockholders Committee of Consolidated Rock Products Co.,

GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 9th day of November, A. D. 1938, pursuant to an order allowing appeal entered on October 10, 1938, in the Clerk's Office of the United States Circuit Court of Appeals for the Ninth Circuit, in that certain cause No. 9000, (No. 25816-H of the District Court of the United States, Southern District of California, Central Division), wherein E. Blois duBois, an objecting bondholder of record to the Plan of Reorganization confirmed in said cause is appellant, and you are appellees to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable CURTIS D. WILBUR, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, this 10th day of October, A. D. 1938, and of the Independence of the United States, the one hundred and sixty third.

CURTIS D. WILBUR

Circuit Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

Service of a copy of the foregoing citation, together with copies of the Order Allowing Appeal, Petition for Leave to Appeal and Assignment of Errors is acknowledged, this 13th day of October, 1938.

O'MELVENY, TULLER & MYERS.

BY MILTON A. TAYLOR

Attorneys for F. B. Badgley, Colonel R. E. Frith, T. Fenton Knight and Walter S. Taylor, composing the Union Rock Company Bondholder's Protective Committee.

GIBSON, DUNN & CRUTCHER

BY GEO. J. ARBLASTER

Attorneys for Wm. D. Courtright, Fred L. Dreher, F. J. Gay and Guy Witter, composing the Consumers Rock and Gravel Company, Inc. Bondholders' Protective Committee.

Received above copies

STANLEY ARNDT

B.

STANLEY ARNDT

Attorney for Edward E. Hatch and Louis Van Gelder, composing the Preferred Stockholders Committee of Consolidated Rock Products Co.

LATHAM, WATKINS & BOUCHARD

BY D. C. WORLEY

Attorneys for Consolidated Rock Products Co.

[Endorsed]: Filed Dec. 22, 1938. R. S. Zimmerman,
Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

In the Matter of	(
)	
CONSOLIDATED ROCK	(	In Proceedings for the
PRODUCTS CO., a Dela-	)	Reorganization of a
ware corporation,	(	Corporation.
)	
Debtor.	(	No. 25816-H.
)	
UNION ROCK COMPANY,	(
a corporation,	)	PETITION OF
	(	DEBTOR AND
Subsidiary,	)	BONDHOLDERS'
	(	COMMITTEES
and	)	SUBMITTING
	(	PLAN OF
CONSUMERS ROCK &	)	REORGANIZATION
GRAVEL COMPANY, INC.,	(	DATED
a corporation,	)	MARCH 15, 1937.
	(
Subsidiary.)	

TO THE HONORABLE THE JUDGES OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALI-
FORNIA, CENTRAL DIVISION:

This petition of CONSOLIDATED ROCK PROD-
UCTS CO., Debtor herein; and F. B. Badgley, Colonel R.
E. Frith, T. Fenton Knight, and Walter S. Taylor, as
the UNION ROCK COMPANY BONDHOLDERS'
PROTECTIVE COMMITTEE constituted by and acting
under Union Rock Company Bondholders' Protective

Agreement dated as of May 23, 1935, between said Committee and such holders of First Mortgage Serial and Sinking Fund Gold Bonds of Union Rock Company as have become parties thereto in the manner therein provided; and Wm. D. Courtright, Fred L. Dreher, F. J. Gay, Alfred Ginoux, and Guy Witter, as the CONSUMERS ROCK & GRAVEL COMPANY, INC., BONDHOLDERS' PROTECTIVE COMMITTEE constituted by and acting under Consumers Rock & Gravel Company, Inc., Bondholders' Protective Agreement dated June 1, 1935, between said Committee and such holders of First Mortgage Sinking Fund Gold Bonds of Consumers Rock & Gravel Company, Inc., as have become parties thereto in the manner therein provided (said Debtor and said bondholders' committees being hereinafter sometimes referred to as "petitioners"); respectfully shows that:

I.

Petitioner Consumers Rock & Gravel Company, Inc., Bondholders' Protective Committee (hereinafter referred to as the "Consumers Committee") holds possession of \$802,500 principal amount of the above mentioned bonds of said Consumers Rock & Gravel Company, Inc. (hereinafter referred to as "consumers"), which have been and now are deposited with said petitioner under the terms of the above mentioned Consumers Bondholders' Protective Agreement, out of a total (including \$63,500 principal amount owned by Consolidated Rock Products Co.) of \$1,200,500 principal amount of said Consumers bonds now outstanding.

Petitioner Union Rock Company Bondholders' Protective Committee (hereinafter referred to as the "Union Committee") is the legal owner of \$777,000 principal amount of the above mentioned bonds of said Union Rock

Company (hereinafter referred to as "Union"), which have been and now are deposited with said petitioner under the terms of the above mentioned Union Bondholders' Protective Agreement, out of a total (including \$102,500 principal amount held by Consolidated Rock Products Co.) of \$1,979,500 principal amount of said Union bonds now outstanding.

II.

Consumers and Union have heretofore filed petitions in this proceeding stating that they are, respectively, corporations a majority of the capital stock of which having power to vote for the election of directors is owned, either directly or indirectly, by Consolidated Rock Products Co. (hereinafter referred to as "Consolidated"), the principal Debtor herein, and stating further that substantially all of the properties of Consumers and Union are operated by said principal Debtor under certain operating agreements, and stating further that Consumers and Union are, respectively, unable to meet their debts as they mature and that they desire to effect a plan of reorganization in connection with or as a part of the plan of reorganization of said principal Debtor; and said petitions of Consumers and Union have heretofore been duly approved by the court in these proceedings.

III.

As appears more fully elsewhere in these proceedings, Consolidated has outstanding preferred and common stocks, and also owns the outstanding stock of Union and the outstanding stock of Consumers, the properties of which are subject to indentures securing the Union and Consumers bonds respectively. As a result of negotiations conducted almost continuously during the last two years

between representatives of Consolidated and the Consumers Committee and the Union Committee, a plan of reorganization dated March 15, 1937, has been adopted by the board of directors of Consolidated and by the Consumers Committee and by the Union Committee, a copy of which is attached hereto as Exhibit A and filed herewith, the Consumers Committee and Consolidated, having abandoned the plans heretofore filed herein by them respectively.

IV.

The plan provides in general for the transfer of all of the properties of Consolidated, Consumers and Union to a new corporation which is to be organized for the purpose, with a capital structure consisting of new bonds, new preferred stock, and new common stock. The aggregate principal amount of the new bonds is to be one-half of the aggregate principal amount of Consumers and Union bonds outstanding in the hands of the public, excluding the Consumers and Union bonds held by Consolidated. Such new bonds are to be secured by a new indenture covering substantially all of the properties of the new corporation. The new preferred stock is to be of the par value of \$50 per share, and its aggregate par value will equal the remaining one-half of the principal amount of the bonds of Union and Consumers outstanding in the hands of the public as aforesaid. The new common stock is to be of the par value of \$2 per share. The new bonds and the new preferred stock are each to be divided into two series, designated Series U and Series C respectively. Each holder of a \$1,000 present Union bond will be entitled to receive a new \$500 Series U bond and 10 shares of new Series U preferred stock, together with warrants entitling him to purchase 20 shares of new

common stock at any time during a period of five years at prices ranging from \$2 to \$6 per share. Each holder of a \$1,000 present Consumers bond will receive the same securities as the holder of a \$1,000 Union bond, except that his new bonds and preferred stock will be of Series C. Each holder of present preferred stock of Consolidated will be entitled to receive one share of new common stock for each share of such preferred stock, and each holder of present common stock of Consolidated will be entitled to receive for each 5 shares of such present common stock a warrant entitling him to purchase one share of new common stock at any time within three months after the date of such warrant, at the price of \$1 per share.

The new bonds are to be dated as of April 1, 1937, and are to mature on April 1, 1957, and are to bear interest from April 1, 1937, regardless of the date of actual consummation of the plan, at the rate of five per cent per annum, payable out of available net income as defined in the plan, but such interest shall be cumulative. A sinking fund for the retirement of the new bonds is provided out of available net income, sufficient to retire annually approximately four per cent of the principal amount of the new bonds originally issued, on a cumulative basis. Dividends on the new preferred stock are to be at the rate of five per cent per annum of its par value and are to be noncumulative until such time as the corresponding series of new bonds shall have been retired, and thereupon shall become cumulative. A sinking fund for the retirement of the new preferred stock is provided, which will not operate until the corresponding series of new bonds has been retired, and will then be sufficient to retire annually on a cumulative basis approximately four per

cent of the amount of new preferred stock originally issued.

The available net income of the new corporation, as defined in the plan, is to be divided into two equal parts, one of which is to be applied to servicing the new Series U bonds and preferred stock, and the other to servicing the new Series C bonds and preferred stock. Provision is also made for the application of proceeds to be received from the sale of nonessential properties, to the retirement of new bonds and preferred stock at the most advantageous prices obtainable, in a manner which should tend to equalize within a reasonable time the amounts of the respective series of the new bonds and preferred stock outstanding.

The voting rights on the stock of the new corporation will be divided in such a way that the holders of the new common stock will be entitled to elect five out of nine directors, and the holders of each of the series of new preferred stock will be entitled to elect two directors, with the result that the persons who are now stockholders of Consolidated will be entitled to elect five out of nine directors of the new corporation, and the persons who are now bondholders will be entitled to elect four out of the nine directors of the new corporation. The plan further provides that if the new corporation fails to make certain minimum payments by way of interest on the new bonds or dividends on the new preferred stock, the holders of the new preferred stock will become entitled to elect six out of the nine directors, and the common stockholders of the new corporation will then be entitled to elect three directors, thus affording to persons who are present bondholders the opportunity of obtaining voting control of the new corporation under circumstances which would appear to warrant such control.

V.

Because of the divergent points of view of the representatives of the three groups of security holders who have negotiated the plan, the plan necessarily represents compromises on a number of important points. This has resulted in a degree of complexity believed to be unavoidable under the circumstances. Petitioners believe, however, that the plan is feasible and essentially fair to all of the security holders who will be affected thereby and that in providing the means of keeping all three of the properties together as an operating unit, while at the same time preserving the relative interests of the security holders, it will prove advantageous to all and will be substantially preferable to any alternative involving foreclosure or segregation of any one or more of the properties.

VI.

Neither the Union Committee nor the Consumers Committee intends to accept any additional bonds for deposit under their respective bondholders' protective agreements. With respect to bonds heretofore deposited, it is the intention of said committees to adopt the plan under their respective bondholders' protective agreements and mail to each depositor a copy of the plan, informing them that if they desire to approve the plan, they need take no affirmative action and the respective committees will accept the plan on their behalf; that if the depositors do not wish to approve the plan, they may advise their committee in writing of their dissent within thirty days and the committees will not accept the plan on behalf of any such dissenting depositor; and that any depositors who wish to withdraw their bonds from deposit may do so by filing with their depositary written notice of their intention to withdraw and by paying their pro rata share

of their committee's expenses incurred to the date of withdrawal. With respect to nondeposited bonds, said committees propose to submit to the holders thereof a copy of the plan, a form of written acceptance, and a letter of transmittal, with instructions that those holders who wish to accept the plan should execute the form of written acceptance and forward it, together with their bonds, to the bank appointed as escrow agent for the purpose of holding such bonds, with authority to such escrow agent to file the written acceptance in this proceeding on behalf of the accepting bondholder.

VII.

Petitioners have prepared and attach hereto as exhibits, in addition to the plan of reorganization, the following:

EXHIBIT B—Union Committee's proposed letter to depositing bondholders, including a summary of the plan.

EXHIBIT C—Union Committee's proposed letter to nondepositing bondholders, including a summary of the plan.

EXHIBIT D—Proposed form of written acceptance for use by nondepositing Union bondholders.

EXHIBIT E—Proposed form of letter of transmittal for use by nondepositing Union bondholders.

EXHIBIT F—Duplicate copy of proposed form of letter of transmittal to be returned to, accepting Union bondholders by company acting as escrow agent.

EXHIBIT G—Consumers Committee's proposed letter to depositing bondholders, including a summary of the plan.

EXHIBIT H—Consumers Committee's proposed letter to nondepositing bondholders, including a summary of the plan.

EXHIBIT I—Proposed form of written acceptance for use by nondepositing Consumers bondholders.

EXHIBIT J—Proposed form of letter of transmittal for use by nondepositing Consumers bondholders.

EXHIBIT K—Duplicate copy of proposed form of letter of transmittal to be returned to accepting Consumers bondholders by bank acting as escrow agent.

EXHIBIT L—Proposed letter from Consolidated to its stockholders.

EXHIBIT M—Proposed form of written acceptance of plan for use by Consolidated stockholders.

EXHIBIT N—Proposed form of letter of transmittal for use by Consolidated stockholders.

EXHIBIT O—Duplicate copy of proposed form of letter of transmittal to be returned to accepting Consolidated stockholders by escrow agent.

WHEREFORE, petitioners respectfully pray that this court make and enter its order authorizing petitioners to submit the plan of reorganization to the various security holders who will be affected thereby, and approving the procedure proposed to be followed by petitioners in soliciting acceptances of the plan, and approving the forms of the proposed letters of explanation, summary of the plan, forms of written acceptance of the plan, and letters of transmittal proposed to be mailed by petitioners to the security holders as hereinbefore set forth.

Dated at Los Angeles, California, April 16, 1937.

CONSOLIDATED ROCK PRODUCTS CO.

By Robt. Mitchell

Its Vice President.

And J. R. Alder

Its Assistant Secretary.

Debtor.

LATHAM, WATKINS & BOUCHARD,

By Paul R. Watkins

Attorneys for Consolidated Rock Products Co.

UNION ROCK COMPANY BOND-
HOLDERS' PROTECTIVE COM-
MITTEE

By F. B. Badgley.

(F. B. Badgley)

R. E. Frith

(R. E. Frith)

T. Fenton Knight

(T. Fenton Knight)

Walter S. Taylor

(Walter S. Taylor)

Union Committee.

O'MELVENY, TULLER & MYERS,

And Graham L. Sterling, Jr.

Attorneys for Union Rock Company Bond-
holders' Protective Committee.

CONSUMERS ROCK & GRAVEL COM-
PANY, INC., BONDHOLDERS' PRO-
TECTIVE COMMITTEE

By Wm. D. Courtright
(Wm. D. Courtright)

Fred L. Dreher
(Fred L. Dreher)

F. J. Gay
(F. J. Gay)

Guy Witter
(Guy Witter)

Being a majority of the members of said
Consumers Committee.

PETITIONERS.

GIBSON, DUNN & CRUTCHER.

By J. C. Macfarland

Attorneys for Consumers Rock & Gravel Com-
pany, Inc., Bondholders' Protective Committee.

STATE OF CALIFORNIA (: SS.
COUNTY OF LOS ANGELES)

ROBT. MITCHELL, being duly sworn, deposes and says that CONSOLIDATED ROCK PRODUCTS CO., one of the petitioners in the foregoing petition, is a corporation and that affiant is an officer thereof, to wit, a vice president, and makes this verification for and on behalf of said corporation; that affiant has read said petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters he believes it to be true.

Robt. Mitchell

Subscribed and sworn to before me this 16 day of April,
1937.

[Seal]

George Rollnick

Notary Public in and for said County and State.

My Commission Expires August 30, 1937.

STATE OF CALIFORNIA (: SS.
COUNTY OF LOS ANGELES)

T. FENTON KNIGHT, being duly sworn, deposes and says that he is a member of UNION ROCK COMPANY BONDHOLDERS' PROTECTIVE COMMITTEE, one of the petitioners in the foregoing petition, and makes this verification for and on behalf of said Bondholders' Committee; that affiant has read said petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters he believes it to be true.

T. Fenton Knight

Subscribed and sworn to before me this 21st day of April, 1937.

[Seal]

Caroline E. Tracy

Notary Public in and for said County and State.

STATE OF CALIFORNIA (: SS.
COUNTY OF LOS ANGELES)

GUY WITTER, being duly sworn, deposes and says that he is a member of CONSUMERS ROCK & GRAVEL COMPANY, INC., BONDHOLDERS' PROTECTIVE COMMITTEE, one of the petitioners in the foregoing petition, and makes this verification for and on behalf of said Bondholders' Committee; that affiant has read said petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters he believes it to be true.

Guy Witter

Subscribed and sworn to before me this 21st day of April, 1937.

[Seal]

Meredith Koch

Notary Public in and for said County and State,

My commission expires April 17, 1941.

[EXHIBIT A]

PLAN OF REORGANIZATION
FOR
CONSOLIDATED ROCK PRODUCTS CO.,
UNION ROCK COMPANY,
AND
CONSUMERS ROCK AND GRAVEL
COMPANY, INC.

Submitted by

Consolidated Rock Products Co.,
Union Rock Company Bondholders' Committee
and
Consumers Rock and Gravel Company, Inc.
Bondholders' Committee.

Dated: March 15, 1937.

PLAN OF REORGANIZATION
FOR
CONSOLIDATED ROCK PRODUCTS CO.,
UNION ROCK COMPANY,
AND
CONSUMERS ROCK AND GRAVEL
COMPANY, INC.

ARTICLE I.

DEFINITIONS.

When used in this plan, unless the context otherwise requires, the following terms shall have the following meanings:

"Debtor" or "Consolidated" means Consolidated Rock Products Co., a Delaware corporation.

"Union" means Union Rock Company, a Delaware corporation.

"Consumers" means Consumers Rock and Gravel Company, Inc., a Delaware corporation.

"Union bonds" means bonds issued by Union, dated as of September 1, 1927, and known as its First Mortgage Serial and Sinking Fund Gold Bonds.

"Consumers bonds" means bonds issued by Consumers dated as of July 1, 1928, and known as its First Mortgage Sinking Fund Gold Bonds.

"Present Union indenture" means the trust indenture, dated as of September 1, 1927, executed by Union to Title Insurance and Trust Company, as trustee, for the purpose of securing the Union bonds, together with any and all supplements and/or amendments thereto.

"Present Consumers indenture" means the trust indenture dated as of July 1, 1928, executed by Consumers to Bank of Italy National Trust and Savings Association (to which Bank of America National Trust and Savings Association has heretofore duly succeeded), as trustee, for the purpose of securing the Consumers bonds, together with any and all supplements and/or amendments thereto.

"Union bondholders" means the owners and holders of bonds secured by the present Union indenture.

"Consumers bondholders" means the owners and holders of bonds secured by the present Consumers indenture.

"Union protective agreement" means the Union Rock Company Bondholders' Protective Agreement dated as of May 23, 1935, as now in effect or hereafter amended, providing for the deposit of the Union bonds, whereunder F. B. Badgley, Colonel R. E. Frith, T. Fenton Knight and Walter S. Taylor are the present committee members.

"Union Committee" means the committee, as now or hereafter constituted, created under the Union protective agreement.

"Consumers protective agreement" means the Bondholders' Protective Agreement dated as of June 1, 1935, as now in effect or hereafter amended, providing for the deposit of the Consumers bonds, whereunder Wm. D. Courtright, Fred L. Dreher, F. J. Gay, Alfred Ginoux and Guy Witter are the present committee members.

"Consumers Committee" means the committee, as now or hereafter constituted, created under the Consumers protective agreement.

"Present preferred stock" means the outstanding preferred stock of Debtor.

"Present common stock" means the outstanding common stock of Debtor.

"New bonds" means the new bonds to be issued pursuant to this plan.

"New indenture" means the indenture to be executed pursuant to this plan to secure the new bonds.

"New preferred stock" means the 5% preferred stock of the new corporation to be issued pursuant to this plan.

"Participating certificates" means certificates issued under the voting trust agreements to be executed pursuant to this plan, representing the new preferred stock held by the voting trustees under such voting trust agreements.

"New common stock" means the common stock of the new corporation to be issued pursuant to this plan.

"New corporation" means the new corporation to be formed pursuant to this plan, which is to acquire all properties of the Debtor, Union and Consumers, issue the new bonds and new stock, and execute the new indenture.

"Present Union trustee" means Title Insurance and Trust Company, or its successor, as trustee under the present Union indenture.

"Present Consumers trustee" means Bank of America National Trust and Savings Association, or its successor, as trustee under the present Consumers indenture.

"Trustee" means the Trustee under the new indenture.

"Section 77B" means Section 77B of the Act of Congress of July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States", as heretofore or hereafter amended.

"Reorganization proceedings" means the proceedings heretofore instituted in the United States District Court

for the Southern District of California, Central Division, for a reorganization of the Debtor, Consumers and Union under Section 77B.

"Court" means the court in the reorganization proceedings, and "judge" means the judge of said court.

"Creditors" shall include, for all purposes of the plan, its acceptance and confirmation, all holders of claims of whatever character against the Debtor or Union or Consumers, or the property of any or all of them, including claims under executory contracts, whether or not such claims would otherwise constitute provable claims under the Bankruptcy Act; and the term "claims" includes debts, securities other than stock, liens or other interest of whatever character.

"Union properties" means all properties, real or personal, tangible or intangible, owned by Union.

"Consumers properties" means all properties, real or personal, tangible or intangible, owned by Consumers.

"Consolidated properties" means all properties, real or personal, tangible or intangible, owned by Consolidated.

The term "approximately equal" as used herein with respect to the principal amounts of new bonds and new preferred stock of Series U and Series C which may be outstanding, means that the difference in aggregate principal amount or par value between the new bonds or new preferred stock of said series, respectively, outstanding shall be less than 1% of the aggregate principal amount or par value of both said series outstanding.

ARTICLE II.

INTRODUCTORY.

In 1929 and thereafter, the Debtor acquired and now owns and holds all of the outstanding stock of Union and Consumers, the properties of which are subject, respectively, to the present Union indenture and the present Consumers indenture. Since April 1, 1929, Debtor has been operating the properties of Union and Consumers. The Debtor is engaged in the business of producing, handling and selling sand, rock, gravel and other building materials throughout southern California.

The outstanding securities of the Debtor, Union and Consumers which are to be affected by this plan are:

- (a) Union bonds in the aggregate principal amount of \$1,979,500;
- (b) Consumers bonds in the aggregate principal amount of \$1,200,500;
- (c) 285,947 shares of present preferred stock of the Debtor, without par value;
- (d) 397,455 shares of present common stock of the Debtor, without par value.

Default was made in the payment of the principal of the Union bonds which became due and payable on September 1, 1933, September 1, 1934, September 1, 1935, and September 1, 1936, and such principal is now due and unpaid; and default was made in the payment of semiannual interest installments due and payable on the Union bonds on March 1, 1934, September 1, 1934, March 1, 1935, September 1, 1935, March 1, 1936, September

1, 1936, and March 1, 1937, and such interest installments are now due and unpaid.

Default was made in the payment of semiannual interest installments due and payable on the Consumers bonds on July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936 and January 1, 1937, and such interest installments are now due and unpaid.

On May 24, 1935, the Debtor filed a petition in the United States District Court for the Southern District of California, Central Division, for a reorganization of the Debtor pursuant to Section 77B; and on the same date Union and Consumers filed similar petitions in said court for reorganization in connection with or as a part of the reorganization of the Debtor. On May 24, 1935, the court entered orders respectively approving said petitions and adjudging that they were properly filed under Section 77B and that they were filed in good faith. By said orders and subsequent orders, duly made after notice to all interested persons, the Debtor has been left in possession of its properties and the properties of Union and Consumers.

ARTICLE III.

THE PLAN IN GENERAL.

The properties of Union, Consumers and Consolidated will be transferred to the new corporation free and clear of all claims of the Debtor, its stockholders and creditors, and free and clear of all claims of Union, Consumers, and their respective stockholders and creditors, except

those claims which are to be assumed by the new corporation as hereinafter expressly provided. The new corporation will have the following capitalization:

- (1) \$1,507,000 principal amount of new bonds. The new bonds will be divided into Series U and Series C, comprising principal amounts of \$938,500 and \$568,500 respectively;
- (2) 30,140 shares of 5% preferred stock of the par value of \$50.00 per share. The preferred stock will be divided into Series U and Series C, comprising 18,770 and 11,370 shares respectively;
- (3) 425,718 shares of common stock of the par value of \$2 per share, of which
 - (a) 285,947 shares will be issued to the present preferred stockholders of the Debtor;
 - (b) 37,540 shares will be reserved for issuance upon the exercise of stock purchase warrants to be attached to the new preferred stock, Series U;
 - (c) 22,740 shares will be reserved for issuance upon exercise of stock purchase warrants to be attached to the new preferred stock, Series C;
 - (d) 79,491 shares will be reserved for issuance upon exercise of stock purchase warrants to be issued to the holders of the present common stock of the Debtor.

ARTICLE IV.

TREATMENT OF EXISTING SECURITY
HOLDERS AND CREDITORS.

Bondholders. The rights of the holders of Union and Consumers bonds shall be modified and altered by the transfer to the new corporation of all properties of Union and Consumers, free and clear (except as aforesaid) of all claims of the Debtor, its creditors and stockholders, and free and clear of all claims of Union and Consumers, their stockholders and creditors, and by the issuance by the new corporation of new securities in exchange for the present bonds held by them as follows:

- (a) \$500 principal amount of new bonds, Series U;
- (b) 10 shares of new preferred stock, Series U, or participating certificates therefor;
- (c) Attached to each certificate for shares of new preferred stock (or participating certificate therefor) will be a non-detachable stock purchase warrant entitling the holder to purchase 2 shares of new common stock for each share of such preferred stock at any time before the expiration of five years after the date of is-

For each \$1,000 principal amount of Union bonds, with all the appurtenant unpaid coupons maturing on or after March 1, 1934.

suance or prior to the redemption of the new preferred stock, whichever occurs earlier, at the following prices:

- (1) If exercised during the first six months at \$2 per share;
- (2) If exercised during the second six months, at \$4 per share;
- (3) If exercised during the second year, at \$4.50 per share;
- (4) If exercised during the third year, at \$5 per share;
- (5) If exercised during the fourth year, at \$5.50 per share;
- (6) If exercised during the fifth year, at \$6 per share.

Holders of Union bonds of the denomination of \$500 each will receive for each such bond one-half of the new securities to which a holder of a Union bond of the denomination of \$1,000 will be entitled.

- (a) \$500 principal amount of new bonds, Series C;
- (b) 10 shares of new preferred stock, Series C, or participating certificates therefor;

For each \$1,000 principal amount of Consumers bonds, with all the appurtenant unpaid coupons maturing on or after July 1, 1934.

(c) Attached to each certificate for shares of new preferred stock (or participating certificate therefor) will be a non-detachable stock purchase warrant entitling the holder to purchase 2 shares of new common stock for each share of such preferred stock at any time before the expiration of five years after the date of issuance or prior to the redemption of the new preferred stock, whichever occurs earlier, at the following prices:

- (1) If exercised during the first six months, at \$2 per share;
- (2) If exercised during the second six months, at \$4 per share;
- (3) If exercised during the second year, at \$4.50 per share;
- (4) If exercised during the third year, at \$5 per share;
- (5) If exercised during the fourth year, at \$5.50 per share;
- (6) If exercised during the fifth year, at \$6 per share.

Holders of Consumers bonds of the denomination of \$500 each will receive for each such bond one-half of the new securities to which a holder of a Consumers bond of the denomination of \$1,000 will be entitled.

Stockholders. The rights of the holders of the present preferred stock of the present common stock of the Debtor shall be modified and altered by the transfer to the new corporation of all of the Debtor's properties free and clear of all claims (except as aforesaid) of the Debtor, its stockholders and creditors, and by the issuance by the new corporation of new securities in exchange for the present preferred stock and the present common stock held by them as follows:

- | | | |
|--|---|--|
| For each share of present preferred stock | { | One share of new common stock. |
| For each five shares of present common stock | { | A stock purchase warrant entitling the holder thereof, at any time within three months after its date, to purchase one share of new common stock at the price of \$1.00. |
| | | No fractional warrants or warrants for fractional shares shall be issued. |

The plan will not become effective, subject to the provisions of the following paragraph, until it shall have been confirmed by the court and accepted in the manner provided in Section 77B by or on behalf of:

- (1) The holders of at least $\frac{2}{3}$ in amount of Union bonds;

- (2) The holders of at least $\frac{2}{3}$ in amount of Consumers bonds;
- (3) The holders of at least a majority of the present preferred stock of the Debtor;
- (4) The holders of at least a majority of the present common stock of the Debtor; and
- (5) By the Debtor as the holder of at least a majority of the outstanding stock of Union and Consumers.

Upon such confirmation and acceptance the plan shall be binding upon all the holders of Union and Consumers bonds, and upon all the holders of the present preferred and common stock of the Debtor, including those who have not, as well as those who have accepted it, and on the Debtor, Union and Consumers; provided, however, that if the court in the reorganization proceedings shall determine that the Debtor or Union or Consumers is insolvent, or that any class of stockholders will not be materially and adversely affected by the plan, this plan may be confirmed and consummated without the consent of the stockholders of the Debtor or of Union or of Consumers, or any class thereof not so affected, as the case may be.

Other Creditors. The right of creditors of the Debtor or of Union or of Consumers (other than Union, Consumers, the holders of Union or Consumers bonds, the present Union trustee as the representative of Union bondholders, and the present Consumers trustee as the representative of Consumers bondholders) shall not be materially and adversely affected by the plan, provided their claims have either been allowed or their executory

contracts or leases with the Debtor or Union or Consumers, as the case may be, shall have been affirmed and recognized in the reorganization proceedings, or provided claims are for current operating expenses, and the corporation shall assume all such claims but shall not assume any claims which have not been so allowed, affirmed, or recognized or which are not claims for current operating expenses.

ARTICLE V.

ALLOCATION OF NET INCOME.

The net income of the new corporation, as hereinafter defined, shall be divided into two equal parts, and, subject to the provisions hereinafter contained, and to the extent available, shall be applied according to the following schedule of priorities:

An amount equal to 50% of such net income shall be applied to:

First: The payment of interest at the rate of 5% per annum on the new Series U bonds;

Second: The creation and maintenance of the sinking fund for new Series U bonds (see Article VI below);

Third: The payment of 5% dividends on the new series U preferred stock;

Fourth: The creation and maintenance of the sinking fund for the new Series U preferred stock (see Article VII below);

Fifth: Any moneys remaining shall be applied to the general corporate purposes of the new corporation.

An amount equal to 50% of such net income shall be applied to:

First: The payment of interest at the rate of 5% per annum on the new Series C bonds;

Second: The creation and maintenance of the sinking fund for new Series C bonds (see Article VI below);

Third: The payment of 5% dividends on the new Series C preferred stock;

Fourth: The creation and maintenance of the sinking fund for the new Series C preferred stock (see Article VII below);

Fifth: Any moneys remaining shall be applied to the general corporate purposes of the new corporation.

Until such time as (but not thereafter) the aggregate principal amount of new Series U bonds outstanding shall be approximately equal to the aggregate principal amount of new Series C bonds outstanding, if the 50% of such available net income applicable to the smaller series of new bonds and new preferred stock in any year shall exceed the interest and sinking fund requirements of the new bonds of that series and the dividend requirements of the new preferred stock of that series, for that year, then the excess up to an amount equal to the difference between the total of such requirements for that series and the total of such requirements for the other and larger series of new bonds and new preferred stock shall be applied to the retirement of outstanding new bonds of either series by purchase on the open market or through calls for tenders, at the best prices obtainable, not exceeding the redemption price; and if new bonds of either series cannot be pur-

chased at less than their redemption price, such excess up to the aforesaid amount shall be applied to the redemption of new bonds of the smaller series outstanding.

The new corporation shall not, however, pay any dividends on the new common stock without applying an equal amount to the retirement of new preferred stock, in addition to the sinking fund requirements with respect to such stock. Such retirement shall be accomplished by purchase at the lowest prices obtainable, not exceeding the redemption price, but if no preferred stock is offered at less than the redemption price thereof, then the new corporation shall call such stock for redemption by lot irrespective of series.

ARTICLE VI.

PROVISIONS OF NEW BONDS AND OF NEW TRUST INDENTURE.

1. The new bonds shall be dated as of April 1, 1937, and (subject to provisions for earlier maturity by reason of redemption, acceleration of maturity, or otherwise) shall mature twenty (20) years from their date. The authorized principal amount of new bonds shall be \$1,507,000. The new bonds shall bear interest at the rate of five per cent (5%) per annum, such interest to be payable semi-annually each year on October 1, and April 1, but shall be payable on such interest dates only if and to the extent that the net income of the new corporation for the semiannual period ended three (3) months preceding each respective interest payment date, available for the payment of interest, as hereinafter provided, shall suffice for such payment. Such interest shall be cumulative. The new indenture may provide that distributions of in-

terest to bondholders need be made only in multiples of one-fourth of one per cent ($\frac{1}{4}$ of 1%) of the principal amount of the outstanding new bonds, and that no such distribution need be made in an amount less than one per cent (1%) of such principal. Interest not earned and available, as aforesaid, in any semiannual period shall accumulate.

2. The new bonds shall be secured by a new indenture in the nature of a trust deed and/or mortgage and chattel mortgage upon all of the property to be acquired by the new corporation (including all properties owned by subsidiaries of the Debtor or Union or Consumers), subject to the lien of taxes, any or all leases, easements, right-of-way, any encumbrance executed pursuant to Article XI hereof, and such other matters, if any, as may be approved or authorized by the Union Committee and the Consumers Committee, acting jointly. The new indenture shall be executed by the new corporation and shall designate as Trustee such bank or trust company as shall be selected by the Union Committee and the Consumers Committee, acting jointly, with such powers, duties, rights, privileges and immunities, not inconsistent with the plan, as shall be provided in the new indenture. The Trustee shall be entitled to reasonable compensation for its services. Union and Consumers bonds received by the new corporation in exchange for new securities under the plan shall be delivered to the Trustee and pledged as collateral security for the new bonds.

3. The new bonds shall not bear coupons, but shall be registered both as to principal and interest, and payment of interest and principal shall be made by the new corporation to the Trustee and by the Trustee only to the registered holders.

4. The new bonds shall be redeemable on any interest payment date, in whole or in part (selected by lot), at their face amount plus accrued and unpaid interest.

5. The new indenture shall provide that there shall be deposited with the Trustee, at least fifteen (15) days before each semiannual interest payment date, (a) such amount, not exceeding 50% of the available net income of the new corporation for the six (6) months period ended three (3) months prior to such interest payment date, as may be necessary to pay current and accumulated interest on and current and accumulated sinking fund payments with respect to the new Series U bonds, and (b) such amount, not exceeding 50% of the available net income of the new corporation for the same period, as may be necessary to pay current and accumulated interest on, and current and accumulated sinking fund payments with respect to, the new Series C bonds. The amounts referred to in "(a)" and "(b)" shall be applied by the Trustee to the payment of interest, and to the sinking fund requirements of the new Series U bonds and the new Series C bonds, respectively.

6. The term "net income" as used in the plan and in the new indenture is hereby defined to be the result of the following computations:

The gross income of the new corporation shall be computed in accordance with generally accepted accounting practice, and shall include the gross income of the Debtor and its subsidiaries on a consolidated basis from January 1, 1937 to the date of transfer of the properties to the new corporation, but shall exclude (a) moneys received from the sale or exchange of either fee properties or leaseholds and payable to the Trustee as proceeds from fee

properties or leaseholds released from the new indenture; (b) insurance and condemnation moneys and other moneys received as compensation for damaged property; and (c) income derived from retirement of new bonds or new preferred stock purchased at a discount.

From the gross income so computed shall be deducted the operating and other expenses computed as follows, and the balance then remaining shall be the "net income" of the new corporation:

(a) Operating expenses

These shall not include (1) any amounts on account of depreciation, depletion, obsolescence or amortization, or (2) unreasonable salaries or other unreasonable charges.

These shall include (1) salaries and wages, including compensation of executive officers and for other managerial services, provided, however, that any salary over \$9,500 per year to any one executive officer or employee shall be approved by a majority vote of the board of directors, including a majority of the directors elected by the holders of the new preferred stock; (2) repairs, maintenance, and replacements (except as paid from insurance or condemnation moneys or moneys received as compensation for damaged property); (3) alterations, improvements and additions approved by a majority vote of the board of directors, including a majority of the directors elected by the holders of the new preferred stock; (4) operating supplies, including water and power; (5) rents and royalties; (6) provision for all taxes, licenses, assessments and insurance; (7) selling expenses; (8) provision for doubtful accounts;

(9) interest, other than interest on the new bonds; (10) adjustments to operating income for expenses for prior periods; (11) legal and accounting expenses and trustee's fees and expenses; (12) any payments referred to in Article XI hereof; and (13) all other usual and necessary operating expenses not included above.

(b) Such amounts necessary to create and/or maintain adequate working capital as shall be approved by a majority vote of the board of directors, including a majority of the directors elected by the holders of the new preferred stock.

(c) Reorganization expenses, or payments on notes given for such expenses.

7. Net income shall be deemed to be available, as the latter term is used in this plan and to be used in the new indenture, for the various purposes to which it is to be applied unless the board of directors of the new corporation by the vote of at least a majority of its directors, including a majority of the directors elected by holders of the new preferred stock, shall determine by resolution, in their absolute discretion, that such income is not available for any one or more of such purposes, in which case such income shall be applied to such purposes as said board by a similar vote shall determine. An event of default under the new indenture, as defined in Paragraph 10 of this article, shall not be deemed to have occurred, nor shall an event be deemed to have occurred under Article VIII hereof which would change the voting rights on the new preferred stock, if the net income of the new corporation would have been sufficient to make the minimum interest and dividend payments on the new bonds and the new

preferred stock specified in said Paragraph 10 and said Article VIII, respectively, had such net income not been applied to other purposes pursuant to this Paragraph 7.

8. The new indenture shall provide that the new corporation shall file with the Trustee, on or before the fifteenth day preceding each semiannual interest payment date, schedules and reports sworn to be correct by an officer of the new corporation, showing for the semiannual period ended three months preceding such interest payment date the gross and net income of the corporation and such other information as the Trustee shall require; and that the new corporation shall file with the Trustee on or before the fifteenth day of March of each year similar schedules and reports, certified by public accountants satisfactory to the Trustee, covering the operations for the preceding year ended December 31st. Such schedules and reports as may be rendered by public accountants as aforesaid shall be determinative in the event of conflict between the same and the schedules and reports to be furnished by the new corporation. The new indenture shall provide that the Trustee and its representatives shall have access to the books and records of the new corporation and to the properties of the new corporation at any time for the purpose of making examination of the same and that the Commissioner of Corporations of the State of California shall have access to the books and records of the Trustee with respect to the new indenture and the trust thereby created. Such books, records, schedules and reports shall be in such form and shall contain such data as may be required by the Trustee.

9. The amount (not exceeding 50% of the available net income of the new corporation) paid to the Trustee pursuant to Paragraph 5 hereof for the purpose of service

ing the new Series U bonds shall be applied by the Trustee, first, to the payment of current interest on such bonds and then to any unpaid accumulation of interest thereon, and second, to the creation and maintenance, annually or semi-annually, of a sinking fund for the retirement, by purchase or redemption, of \$37,500 principal amount of such bonds per year on a cumulative basis. The amount (not exceeding 50% of the available net income of the new corporation) paid to the Trustee pursuant to Paragraph 5 hereof for the purpose of servicing the new Series C bonds shall be applied by the Trustee, first, to the payment of current interest on such bonds and then to any unpaid accumulation of interest thereon, and second, to the creation and maintenance, annually or semi-annually, of a sinking fund for the retirement, by purchase or redemption, of \$22,500 principal amount of such bonds per year on a cumulative basis. In retiring bonds as aforesaid, the Trustee may purchase the same in the open market at the lowest prices obtainable, not exceeding the redemption price, or may call for tenders; and if unable so to purchase bonds, the Trustee shall then redeem bonds to the extent of the funds available therefor, selecting by lot, in such manner as the Trustee may determine, the bonds so to be redeemed. After the aggregate principal amount of the new Series U bonds outstanding shall be approximately equal to the aggregate principal amount of the new Series C bonds outstanding, there shall be no further distinction between said series with respect to the application of sinking fund moneys available for bond retirement and such moneys shall be applied by the Trustee to the retirement, by purchase or redemption, of \$60,000 principal amount of new bonds per year of either or both series; if the Trustee shall be unable to purchase new

bonds of either series at less than the redemption price, then 50% of said available money shall be applied to redemption by lot of new Series U bonds and the remaining 50% shall be applied to the redemption by lot of new Series C bonds. The new corporation shall be entitled to surrender to the Trustee for cancellation new bonds purchased out of its net income, instead of making cash deposits on account of sinking fund requirements and shall be entitled to receive credit on such sinking fund requirements to the extent of the principal amount of new bonds so surrendered; and the new corporation shall also be entitled to sell new bonds to the Trustee for cancellation, at prices not exceeding the actual cost thereof to the new corporation, in the same manner and under the same conditions as any other holder of new bonds.

10. The new indenture shall provide that, with respect to interest payments on the new bonds, events of default shall be deemed to exist only upon the following conditions:

(a) If on April 1, 1939 the interest paid on the then outstanding new bonds of either series shall not have aggregated, during the two preceding years ended on said date, four per cent (4%) of the principal amount of the new bonds of such series outstanding on said date; or

(b) If on April 1, 1942 the interest paid on the then outstanding new bonds of either series shall not have aggregated, during the five preceding years ended on said date, sixteen per cent (16%) of the principal amount of the new bonds of such series outstanding on said date; or

(c) If on April 1, 1943, or on April 1 of any year thereafter, the interest paid on the then outstanding new bonds of either series shall not have aggregated, in the year ended on any such date, five per cent (5%) of the principal amount of the new bonds of such series outstanding on any such date.

No right of foreclosure or trustee's sale under the new indenture shall accrue until the expiration of two years after the occurrence of any such event of default and then only if such event of default shall not have been meantime remedied.

11. The new indenture shall provide that the net cash proceeds received by the new corporation from the sale or condemnation of its properties or interests therein (whether fee properties or leaseholds, but not including proceeds received as bonuses, rentals or otherwise under oil or gas leases) shall be paid to the Trustee as consideration for the release thereof from the lien of the new indenture and that all such proceeds shall be applied by the Trustee as follows:

(a) Until such time as the aggregate principal amount of new Series U bonds outstanding shall be approximately equal to the aggregate principal amount of new Series C bonds outstanding, such proceeds shall be applied to the retirement of outstanding new bonds of either series by purchase on the open market or through calls for tenders, at the best prices obtainable, not exceeding the redemption price; and if the Trustee shall be unable to purchase bonds of either series at less than the redemption price, one-half of such proceeds shall be applied by the Trustee

to the redemption of outstanding new bonds of both series in the ratio which the original aggregate principal amount of the new Series U bonds bears to the original aggregate principal amount of the new Series C bonds; the other half of such proceeds shall be paid to the new corporation and applied to the retirement of new preferred stock of either series, by purchase on the open market or through calls for tenders, at the best prices obtainable not exceeding the redemption price, until such time as the aggregate number of shares of new preferred stock of each series outstanding shall be approximately equal, and thereafter to the redemption of new bonds as aforesaid; any such proceeds remaining unapplied by the new corporation to the retirement of new preferred stock at the end of ninety (90) days because of inability to purchase new preferred stock at less than its redemption price, shall be applied to the redemption of new bonds as aforesaid;

(b) After the aggregate principal amount of the new Series U bonds outstanding shall be approximately equal to the aggregate principal amount of the new Series C bonds outstanding, and until such time as the aggregate number of shares of new preferred stock, Series U, outstanding shall be approximately equal to the number of shares of new preferred stock, Series C, outstanding, such proceeds shall be paid to the new corporation and applied to the purchase of outstanding new preferred stock of either series on the open market or through calls for tenders, at the best prices obtainable, not exceeding the redemption price; and if the new corporation shall be unable to purchase new preferred stock of either series at less

than the redemption price, such proceeds shall be applied by the new corporation to the redemption of new preferred stock outstanding of both series in the ratio which the original aggregate number of shares of new preferred stock, Series U, bears to the original aggregate number of shares of new preferred stock, Series C;

(c) After the aggregate number of shares of new preferred stock, Series U, outstanding shall be approximately equal to the aggregate number of shares of preferred stock, Series C, such proceeds shall thereafter be applied by the Trustee to the retirement of new bonds then outstanding of either series, by purchase or redemption;

provided, however, that such proceeds shall from time to time be paid to new corporation and applied to such other corporate purposes of the new corporation as may be specifically designated by resolution of its board of directors adopted by the affirmative vote of at least a majority of its directors, including a majority of the directors elected by holders of the new preferred stock, upon the delivery to the Trustee of a copy of any such resolution duly certified by the secretary of the new corporation. New bonds and preferred stock retired pursuant to this paragraph shall not be credited upon the sinking fund requirements, except that new bonds or preferred stock retired with proceeds from the disposition of properties determined by agreement of the Union Committee, the Consumers Committee and Consolidated, or otherwise, to have belonged to Consolidated prior to the consummation of this plan, shall be credited upon the respective sinking fund requirements.

12. The new indenture shall contain adequate provisions permitting the Trustee to subordinate the lien thereof to the lessee's interest under oil or gas leases which may at any time be executed by the new corporation.

13. The new indenture shall provide that with the consent of the holders of seventy-five per cent (75%) in principal amount of the new bonds then outstanding:

(a) The new indenture may be released and the new bonds satisfied (but only with the written consent of the Commissioner of Corporations of the State of California so long as there is such a commissioner) upon payment or delivery to the Trustee, for the benefit of the holders of all the new bonds then outstanding, of a consideration (which may be money, securities or any other consideration). Such consideration may be less than the principal amount of the new bonds then outstanding.

(b) With the consent of the new corporation and the Trustee, any of the terms and provisions of the new indenture or the new bonds may be altered, eliminated or supplemented.

(c) The new indenture may be subordinated to a new mortgage or trust deed or other encumbrance for such purposes and in such amount as said percentage of the holders of the new bonds then outstanding shall approve.

14. The new bonds and the new indenture shall otherwise be in such form and shall contain such terms, provisions and covenants not inconsistent with the terms hereof, as the reorganization committee (hereinafter constituted), may determine.

ARTICLE VII.

NEW PREFERRED STOCK.

The new preferred stock shall have a par value of \$50.00 per share and shall be entitled to preferred dividends at the rate of 5% per annum, and shall be divided into Series U and Series C, as hereinbefore stated. The dividends on such preferred stock shall be noncumulative; provided, however, that any amount of net income as hereinbefore defined available for payment of such dividends, but not applied to such payment, shall accumulate to the extent so available, and further that on the retirement of all new bonds of Series U or of Series C, the dividends on the corresponding series of preferred stock shall become cumulative from the date of such retirement.

The new preferred stock shall be redeemable at par, plus any dividends accumulated and unpaid. In the event of any voluntary or involuntary dissolution, liquidation or winding up of the new corporation, the holders of the new preferred stock shall be entitled to preferential payments to the extent of the full par value thereof, plus any dividends accumulated and unpaid.

On the retirement of all new bonds of Series U or of Series C, the new preferred stock of the corresponding series shall become entitled to the benefit of a sinking fund for the retirement thereof, to be established by the new corporation out of its available net income (not exceeding an amount equal to 50% thereof less amounts required for payment of dividends upon the preferred stock of that series), sufficient to retire by purchase or redemption 750 shares (in the case of the new preferred stock, Series U) and 455 shares (in the case of the new preferred stock, Series C) per annum on a cumulative

basis. Sinking fund money shall be applied first to the purchase of such stock at the lowest prices obtainable (not exceeding the redemption price), and thereafter to the redemption of such stock, the shares to be redeemed to be selected by lot in such manner as the board of directors of the new corporation shall determine. After the aggregate number of shares of new preferred stock, Series U outstanding shall be approximately equal to the aggregate number of shares of new preferred stock, Series C outstanding, there shall be no distinction between said series with respect to the application of moneys available for the retirement thereof, and moneys so available shall be applied to the retirement, by purchase or redemption, of 1,205 shares of new preferred stock of either or both series per annum on a cumulative basis. If shares of either series cannot be purchased at less than the redemption price thereof, then 50% of such moneys shall be applied to the redemption by lot of new preferred stock, Series U and the remaining 50% shall be applied to the redemption by lot of new preferred stock, Series C. The new corporation shall be entitled to surrender to the sinking fund for cancellation new preferred stock purchased out of its net income instead of making cash deposits on account of sinking fund requirements and shall be entitled to receive credit on such sinking fund requirements to the extent of the number of shares of new preferred stock so surrendered; and the new corporation shall also be entitled to sell preferred stock to the sinking fund for cancellation at prices not exceeding the actual cost thereof to the new corporation, in the same manner and under the same conditions as any other holder of new preferred stock.

Wherever in this plan reference is made to the purchase of the new preferred stock, such reference shall be deemed

to include participating certificates issued with respect to such stock; and upon the purchase of participating certificates by the new corporation and their surrender to the depositary and agent under the voting trust agreement under which said certificates were originally issued, such certificates shall be cancelled and the shares of new preferred stock represented thereby shall likewise be surrendered to the new corporation for cancellation.

ARTICLE VIII. VOTING RIGHTS.

The new corporation shall have nine directors, of whom two shall be elected by the holders of the new preferred stock, Series U, two by the holders of the new preferred stock, Series C, and five by the holders of the new common stock; provided, however, upon the happening of any one of the following events, the holders of the new preferred stock, Series U, shall be entitled to elect three directors, the holders of the new preferred stock, Series C, shall be entitled to elect three directors, and the holders of the new common stock shall be entitled to elect three directors:

(1) If moneys paid to the trustee for application to interest payments on both the series of new bonds in any one of the first three years of the term thereof shall not have amounted in the aggregate to at least \$45,210;

(2) If interest paid on either series of the new bonds in any year after the third year of the term thereof shall have amounted to less than 5% per annum;

(3) If dividends paid in any year on either series of the new preferred stock, after all of the new bonds shall have been retired, shall not have amounted to 5% of the par value thereof.

At such time after the occurrence of any one or more of the above mentioned events as all accumulations of interest on outstanding new bonds shall have been paid in full; or, if there are no new bonds then outstanding, all accumulations of dividends on the new preferred stock then outstanding shall have been paid in full, the voting rights on the stock of the new corporation shall revert to their original status, i.e., the holders of the new common stock shall be entitled to elect five out of nine of the directors of the new corporation, and the holders of the new preferred stock Series U shall be entitled to elect two directors, and the holders of the new preferred stock Series C shall be entitled to elect two directors. Such voting rights shall thereafter be subject to change upon the subsequent occurrence of any one of said events, on the basis hereinbefore provided. On the retirement of all the preferred stock of either or both series, then all voting rights of the retired series shall vest in the new common stock.

The affirmative vote of at least a majority of the directors of the new corporation, including a majority of the directors elected by holders of the new preferred stock, shall be required to authorize the sale of any of the properties of the new corporation which are subject to the lien of the new indenture.

The voting power of the new corporation shall be divided between the new preferred stock, Series U, the new preferred stock, Series C, and the new common stock, in accordance with the rights thereof to elect directors.

Of the initial board of directors of the new corporation, two members shall be selected by the Union Committee, two members by the Consumers Committee, and five members by the Debtor.

ARTICLE IX.

VOTING TRUST AGREEMENTS.

The new preferred stock, Series U, to be issued for the benefit of the holders of Union bonds, and the new preferred stock, Series C, to be issued for the benefit of the holders of Consumers bonds, will be issued to the respective voting trustees under two voting trust agreements, one of which shall be designated the "Series U Voting Trust Agreement" and the other of which shall be designated the "Series C Voting Trust Agreement"; and participating certificates shall be issued by the voting trustees thereunder to the holders of Union bonds and Consumers bonds, representing the new preferred stock of the particular series to which they are entitled. Any bondholder who does not wish his new preferred stock to be held by the voting trustees under the voting trust agreement so provided will be entitled to receive his new preferred stock free of any voting trust agreement if he shall give written notice of his wish to the committee representing bonds of his issue at any time prior to the expiration of thirty (30) days after the confirmation of the plan. The voting trust agreements shall be executed by the voting trustees acting thereunder and by the new corporation. Each voting trust agreement shall endure for a period of twenty-one years unless earlier terminated (a) by a majority of the voting trustees thereunder or (b) by instruments in writing executed (1) by the holders of participating certificates

representing 50% or more of the new preferred stock held thereunder and (2) by the holders of 50% or more of the aggregate principal amount of the new bonds then outstanding of the corresponding series, or (c) as a result of the submission of the question of termination to the holders of participating certificates as hereinafter provided.

At intervals of three (3) years after the execution of the voting trust agreements, the voting trustees under each voting trust agreement shall request the holders of participating certificates to vote on the question as to whether or not their voting trust agreement shall be terminated; and if as the result of any such request votes are received from the holders of participating certificates representing 50% or more of the new preferred stock held by the voting trustees of either voting trust agreement and if the holders of a majority of the participating certificates so voting are in favor of termination, the voting trustees shall terminate that agreement within thirty (30) days thereafter.

The initial voting trustees under the Series U voting trust agreement shall be designated by the Union Committee, and the initial voting trustees under the Series C voting trust agreement shall be designated by the Consumers Committee. Each voting trust agreement will provide that at any time any one of the voting trustees thereunder may be removed by a majority of the voting trustees thereunder, and that at any time one or more of the voting trustees thereunder may be removed by instruments in writing executed (1) by the holders of participating certificates representing 50% or more of the new preferred stock held thereunder and (2) by the holders of 50% or more of the aggregate principal amount of the

new bonds then outstanding of the corresponding series; and also that in the event of the death, resignation, incapacity to act, or removal of any voting trustee or voting trustees, a successor or successors may be appointed by the remaining voting trustees or voting trustee thereunder, but that in the event no such appointment is made within thirty (30) days from and after the death, resignation, incapacity to act, or removal of any voting trustee, a successor may be appointed by instruments in writing executed (1) by the holders of participating certificates representing 50% or more of the new preferred stock held thereunder and (2) by the holders of 50% or more of the aggregate principal amount of the new bonds then outstanding of the corresponding series.

The voting trustees shall be entitled to reasonable compensation for their services, but for their usual and ordinary services the compensation of each voting trustee shall not exceed \$10.00 per meeting. The depositary and agent of the voting trustees under each agreement shall be such Los Angeles bank or trust company as may be designated by the voting trustees, and such depositary and agent shall be entitled to reasonable compensation. The compensation of the voting trustees and of their depositaries and agents, and all other expenses of the voting trustees and of the voting trusts, shall be payable by the new corporation from the operating receipts of its properties. If unpaid, such compensation and expenses shall constitute a lien on the stock issued to the voting trustees.

The voting trustees shall possess and shall be entitled to exercise all rights and powers of the holders of the new preferred stock held under the respective voting trust agreements; provided, however, that in the event the voting trustees under either agreement shall propose (a) to

sell all or substantially all of the properties of the new corporation or the new preferred stock held thereunder, and/or (b) to lease, transfer, convey, mortgage or encumber all or substantially all of the properties of the new corporation, such proposal shall be first mailed to the holders of the participating certificates issued thereunder and of the new bonds, if any, then outstanding of the corresponding series; and in the event that within thirty (30) days thereafter written dissents to such proposal shall be filed with the depositary and agent thereunder executed (1) by the holders of participating certificates representing 50% or more of the new preferred stock held thereunder and (2) by the holders of 50% or more of the aggregate principal amount of the new bonds then outstanding of the corresponding series, then in such case the voting trustees under that agreement shall not have the right to consummate the proposal so submitted. The voting trustees under either agreement may in their discretion, but shall not be required to, submit in like manner and with like effect any proposal which they shall deem substantially to affect the rights or interests of the new corporation or of the holders of securities issued by it.

The voting trust agreements, or either of them, may be amended by resolution of all of the voting trustees acting thereunder, respectively; but if such amendment will materially or substantially affect the rights of the holders of participating certificates, the voting trustees shall mail notice of such proposed amendment to the holders of the participating certificates issued under the particular agreement and of the new bonds of the corresponding series, if any, then outstanding and such amendment shall not become effective if within thirty (30) days thereafter written dissents to such amendment shall be filed with

the depository and agent under that agreement executed (1) by the holders of participating certificates representing 50% or more of the new preferred stock held thereunder and (2) by the holders of 50% or more of the aggregate principal amount of the new bonds then outstanding of the corresponding series.

The voting trust agreements shall be in such form and contain such terms, provisions and covenants, respectively, not inconsistent with the terms hereof, as the Union and Consumers committees, respectively, may determine.

ARTICLE X.

CANCELLATION OF UNION BONDS AND CONSUMERS BONDS HELD BY DEBTOR.

As of the date of the plan the Debtor owns and holds Union bonds in the amount of \$102,500 and Consumers bonds in the amount of \$63,500. Such bonds and their appurtenant coupons will be cancelled by the Debtor and will not be included in the capitalization of the new corporation.

ARTICLE XI.

NEW LOAN.

In connection with and to facilitate the consummation of the reorganization and to provide the new corporation with adequate working capital and funds for the payment of the expenses of the reorganization, the new corporation may borrow such amount or amounts as may be approved by the court, not to exceed \$150,000, on such terms as may be approved by the court, and may secure its obligation to repay any sum so borrowed by mortgaging, deeding in trust, pledging or otherwise hypothecating,

in priority to the new indenture, all or any part of the assets now owned by the Debtor and to be acquired by the new corporation in connection with this plan which are not subject to the lien and operation of the present indentures of Union and Consumers. Interest and principal payments made by the new corporation on any such loan shall be deemed to be operating expenses of the new corporation for the purpose of computing the net income of the new corporation to be paid to the Trustee as hereinbefore in Article VI provided.

ARTICLE XII.

PAYMENT OF CLAIMS, COSTS OF ADMINISTRATION AND ALLOWANCES.

No claims (except those to be assumed by the new corporation as hereinbefore provided, and paid according to their terms) are to be paid in cash in full pursuant to this plan, but all costs of administration and other allowances made by the court shall be paid in cash from funds in the hands of the Debtor, or, after the transfer of the properties to the new corporation, in the hands of the new corporation, except that compensation and reimbursement provided for in subdivision (c), clause (9) of Section 77B may be paid in notes of the new corporation, if those entitled thereto will accept such payment and the court finds such compensation reasonable. The members of the Union Committee and of the Consumers Committee shall be entitled to compensation for their services, and likewise, such other persons as the court finds entitled thereto. The

disbursements, liabilities and expenses of said Committees and such other persons will be paid as a part of the expenses of the reorganization. All amounts to be paid by the Debtor or by the new corporation, and all amounts to be paid to said Committee and their respective counsel and others persons for services or expenses incident to the reorganization, are to be subject to the approval of the judge.

ARTICLE XIII.

METHODS OF BECOMING A PARTY TO THE PLAN.

A. Holders of Union bonds not heretofore deposited under the Union protective agreement:

Holders of Union bonds not heretofore deposited under the Union protective agreement may approve and accept the plan by depositing their bonds with the depository thereunder, unless the Union Committee shall have directed such depository not to accept additional deposits at such time, or by filing (if the Union Committee shall so determine) with the Union Committee a written approval and acceptance of this plan, in the form designated by the Union Committee, and by making such deposit or filing such approval and acceptance will authorize the Union Committee on their behalf to approve the plan, to accept the plan in writing and file such acceptance in the reorganization proceedings, and to carry the plan into effect.

Holders of Union bonds may approve and accept the plan in the reorganization proceedings by such other method as may be specified by the judge.

B. Holders of certificates of deposit heretofore issued under the Union protective agreement:

All depositors of Union bonds who shall not file notice of dissent to the plan as provided in the Union protective agreement, and within the time therein provided, shall thereby assent to the plan and shall authorize the Union Committee on their behalf to approve the plan, to accept the plan in writing and file such acceptance in the reorganization proceedings, and to carry the plan into effect.

The Union Committee has caused or will cause copies of the plan to be filed with its depositary and notice to be given to depositors in the manner provided by the Union protective agreement. The adoption of this plan by said Committee shall constitute an amendment of said protective agreement expressly authorizing said Committee, on behalf of all holders of certificates of deposit heretofore issued who shall not file notice of dissent or withdrawal as provided in said agreement, and within the time therein provided, and on behalf of all holders of certificates of deposit hereafter issued, to approve the plan, to accept the plan in writing and file such acceptance in the reorganization proceedings, and to carry the plan into effect.

C. Holders of Consumers bonds not heretofore deposited under the Consumers protective agreement:

Holders of Consumers bonds not heretofore deposited under the Consumers protective agreement may approve and accept the plan by depositing their bonds with the depositary thereunder, unless the Consumers Committee shall have directed such depositary not to accept additional deposits at such time, or by filing (if the Consumers Committee shall so determine) with the Consumers Com-

mittee a written approval and acceptance of this plan, in the form designated by the Consumers Committee, and by making such deposit or filing such approval and acceptance will authorize the Consumers Committee on their behalf to approve the plan, to accept the plan in writing and file such acceptance in the reorganization proceedings, and to carry the plan into effect.

Holders of Consumers bonds may approve and accept the plan in the reorganization proceedings by such other method as may be specified by the judge.

D. Holders of certificates of deposit heretofore issued under the Consumers protective agreement:

All depositors of Consumers bonds who shall not file notice of dissent to the plan as provided in the Consumers protective agreement, and within the time therein provided, shall thereby assent to the plan and shall authorize the Consumers committee on their behalf to approve the plan, to accept the plan in writing and file such acceptance in the reorganization proceedings, and to carry the plan into effect.

The Consumers Committee has caused or will cause copies of the plan to be filed with its depositary and notice to be given to depositors in the manner provided by the Consumers protective agreement. The adoption of this plan by said Committee shall constitute an amendment of said protective agreement expressly authorizing said Committee on behalf of all holders of certificates of deposit heretofore issued who have not filed notice of dissent or

withdrawal as provided in said agreement, and within the time therein provided, and on behalf of all holders of certificates of deposit hereafter issued, to approve the plan, to accept the plan in writing, and file such acceptance in the reorganization proceedings, and to carry the plan into effect.

E. Stockholders of the Debtor: Holders of the present preferred and common stock of the Debtor (if their acceptance shall be required) shall accept the plan in the reorganization proceedings in such manner as shall be specified or approved by the judge.

Upon the confirmation by the court, the plan shall be binding upon the Debtor, Union and Consumers, and upon all holders of Union or Consumers bonds and all other creditors, and upon all stockholders of the Debtor or of Union or of Consumers, including those who have not as well as those who have accepted it.

Holders who tender Union or Consumers bonds for exchange for new securities deliverable under the plan, but fail to tender any appurtenant unpaid interest coupon or coupons maturing on or after March 1, 1934, shall be entitled to receive new bonds only upon indemnifying the new corporation, in such manner as it may require, against any liability in respect of the missing coupon or coupons. Coupons, and the bond to which they appertain, shall be deemed to constitute a single claim, and holders of coupons not attached to bonds shall not be entitled to receive any securities issuable under the plan.

ARTICLE XIV.

MEANS FOR EXECUTION OF PLAN.

Subject to the approval of the judge, the members of the Union Committee (not exceeding four in number), members of the Consumers Committee (not exceeding four in number), and the Debtor's duly appointed representatives (not exceeding four in number), shall act together as a reorganization committee for the purpose of carrying the plan into effect, and the members of the Union and Consumers Committees so acting shall have, with respect to depositing bondholders, all the authority, powers and rights vested in said respective committees pursuant to the respective protective agreements, (except to the extent that any such authority, powers or rights may be inconsistent with Section 77B). The plan may be executed by any one or more means authorized or permitted by Section 77B, whether or not such means are expressly mentioned in the plan. Without limiting the generality of the foregoing, the plan shall be executed at such time after its confirmation as the judge shall prescribe, and otherwise at such time as shall be specified by the reorganization committee, by the transfer and conveyance to the new corporation of the Union, Consumers and Consolidated properties, free and clear of all claims of Union, Consumers and the Debtor, and their respective stockholders and creditors, except to the extent that any such claims are to be assumed by the new corporation as hereinbefore expressly provided; the execution by the new corporation of the new indenture, the issue and

delivery of the new bonds, the new preferred stock, the new common stock, and stock purchase warrants, and the participating certificates and voting trust agreements, as herein provided; the payment in cash of the costs of administration and allowances as provided in Article XII hereof; the execution of such other instruments and the delivery of such other securities and the performance of such other acts as the judge or the reorganization committee, with the approval of the judge, shall deem necessary or proper for the purpose of carrying the plan into execution. Subject to the approval of the judge, the reorganization committee shall have full power and authority to prepare, approve, execute or deliver any or all instruments of whatsoever character in their opinion necessary or proper for the purposes of the plan; and the forms and terms of all certificates or articles of incorporation, bonds, stock certificates, stock purchase warrants and agreements providing for their issue, and all other securities and all other instruments and agreements necessary or proper to carry the plan into effect shall be such as the reorganization committee shall determine. The reorganization committee shall have the authority and power expressly conferred upon it under the provisions of the plan and the Union and Consumers protective agreements and also such incidental powers deemed by it necessary and proper to enable it to carry out the purposes of said plan and said protective agreements.

Changes and modifications in the plan may be made in the manner provided in subdivision (f) of Section 77B.

If any change or modification shall be made in the plan in the manner provided in subdivision (f) of Section 77B, which in the opinion of the Union or Consumers Committees materially affects the rights of their respective depositors, then such depositors may be given the right to dissent and withdraw in the manner provided in said protective agreements, respectively. Either Committee may, at any time prior to the approval of the plan by two-thirds of the bondholders and in its absolute discretion, abandon the plan.

ARTICLE XV.

INDEMNITIES AND AGREEMENTS.

The new corporation shall agree to indemnify the present Union Trustee and the Union Committee and the present Consumers trustee and the Consumers Committee against: (1) all cost and expense caused by or resulting from these proceedings and any reorganization pursuant thereto, in such amounts as have been approved by the judge; (2) all income and other tax liability arising out of the deposit of the bonds, or resulting from the plan of reorganization or any transaction required or authorized by the plan or by the judge in connection with the plan, and (3) all liability resulting from acts done in good faith and within the scope of their authority in connection with the reorganization proceedings and the submission and consummation of this plan of reorganization. The new corporation shall also enter into any and all agreements with the Debtor, the present Union trustee

or the present Consumers trustee, or any one or more of them, which the judge shall find necessary or proper in connection with the carrying into execution of this plan of reorganization.

The acceptance of any of the new bonds, the new stock purchase warrants, or any other new security, pursuant to the plan, shall estop such acceptor from questioning the conformity of such securities in any particular to any provision of the plan, and shall constitute full ratification by such acceptor of all acts and proceedings of the Union Committee, the present Union trustee, the Consumers Committee, the present Consumers trustees and the new corporation in carrying the plan into effect.

The receipt by the holders of certificates of deposit representing a majority in amount of the present bonds, of new securities under any provisions of the plan, shall constitute a release and discharge of the Committees, the new corporation and the present trustees on the part of all bondholders, from all liability and accountability of every kind, character and description whatsoever save the obligation of the new corporation and the voting trustees to make delivery of a like pro rata amount of securities upon the presentation and surrender of outstanding present bonds with all appurtenant coupons.

This plan is submitted by the Debtor, the Union Committee and the Consumers Committee. In order to evidence its adoption the Union Committee and the Consumers Committee have caused this plan to be executed by at least a majority of their members.

Dated as of March 15, 1937.

CONSOLIDATED ROCK PRODUCTS CO.

By ROBT. MITCHELL

Its Vice President

And J. R. ALLDER

Its Asst. Secretary

(Corporate Seal)

Debtor

UNION ROCK COMPANY BONDHOLDERS'
PROTECTIVE COMMITTEE

By F. B. BADGLEY

(F. B. Badgley)

Colonel R. E. FRITH

(Colonel R. E. Frith)

T. FENTON KNIGHT

(T. Fenton Knight)

WALTER S. TAYLOR

(Walter S. Taylor)

UNION COMMITTEE

CONSUMERS ROCK AND GRAVEL
COMPANY, INC.

BONDHOLDERS' PROTECTIVE
COMMITTEE

By WM. D. COURTRIGHT

(Wm. D. Courtright)

FRED L. DREHER

(Fred L. Dreher)

F. J. GAY

(F. J. Gay)

GUY WITTER

(Guy Witter)

CONSUMERS COMMITTEE

[EXHIBIT B]

UNION ROCK COMPANY

Bondholders' Committee

T. Fenton Knight, Secy.

629 South Spring Street

Los Angeles, California

Telephone TRinity 6097

Committee

F. B. Badgley, Chairman.

Colonel R. E. Frith

T. Fenton Knight

Walter S. Taylor

O'Melveny, Tuller & Myers

Title Insurance Bldg.

Counsel

....., 1937.

To Depositors of

Union Rock Company First Mortgage Serial

and Sinking Fund Gold Bonds:

A plan of reorganization involving the complete consolidation of the properties of Consolidated Rock Products Co., Union Rock Company and Consumers Rock and Gravel Company, Inc. (on which this Committee has been working for nearly two years) has now been prepared. This plan, a copy of which is enclosed herewith, has been adopted by this Committee and on 1937, was filed with Title Insurance and Trust Company as Depositary, pursuant to Article III, paragraph (a) of the Union Rock Company Bondholders' Protective Agreement dated May 23, 1935, and is submitted herewith for your consideration. The plan has also been adopted by the Consumers Rock and Gravel Company, Inc. Bondholders' Committee and by the board of directors of Consolidated Rock Products Co., and is at this time

also being presented to the security holders of these two companies for their approval.

The plan provides for the transfer of all of the properties of Consolidated, Consumers and Union to a new corporation which will have a capitalization of bonds, preferred stock of the par value of \$50 per share, and common stock of the par value of \$2 per share. The bonds and preferred stock are to be divided into two series: Series U and Series C. The two series of bonds will be identically secured by a new indenture; and the two series of preferred stock will have the same relative priority as to liquidation preferences. Union bondholders will receive for each \$1000 present Union bond: (a) a new \$500 Series U bond; (b) ten shares of new Series U preferred stock; and (c) warrants entitling the holder to purchase twenty shares of new common stock at any time during a period of five years at prices ranging from \$2 to \$6 per share. Consumers bondholders will receive the same except that their new bonds and preferred stock will be of Series C. Separate voting trusts are provided for the new Series U and Series C preferred stock. Holders of preferred stock of Consolidated will receive one share of new common stock for each share of Consolidated preferred and holders of Consolidated common stock will receive for each 5 shares of Consolidated common a warrant entitling them to purchase one share of new common stock at \$1 per share at any time within 3 months from the date of the warrant.

The long delay in presenting this plan of reorganization to you is largely due to the extended negotiations necessary to reconcile certain differences of opinion between this Committee and the Consumers Bondholders' Commit-

tees and the directors and other representatives of the Consolidated stockholders. These differences of opinion were inherent in the complexity of the situation. Not only are three different corporations involved, each with its own properties, but there are the three groups of security holders, viz., Union bondholders, Consumers bondholders, and Consolidated stockholders, each of which has a particular interest in one of the three properties. The Consumers bondholders have a first mortgage on the Consumers properties; the Union bondholders have a first mortgage on the Union properties; the Consolidated stockholders (through their stock ownership), own the Consolidated properties which are not subject to the lien of either mortgage, and in addition, through Consolidated ownership of the stock of Union and Consumers, have whatever equity there may be in the Union and Consumers properties. Although the interests of these three groups are in some respects divergent, nevertheless all three properties due to their having been operated as a unit for the past seven years, have necessarily become commingled to a degree which would make the process of separation not only difficult, prolonged and expensive, but probably disadvantageous to each of the three groups of security holders for the reason that all three properties can be operated most efficiently and economically as a unit.

The differences in opinion among the three groups have centered around three major points: first, the equitable allocation of net income to the servicing of the two new series of bonds and preferred stock in view of the fact that the major part of the tonnage during the

period of consolidated operation has been produced from the Consumers properties, although the values of the Union and Consumers properties appear to bear substantially the same ratio to each other as the amounts of Union and Consumers bonds outstanding; second, the application to the retirement of the two series of new bonds and preferred stock, of proceeds which may reasonably be expected to be realized in the near future from the liquidation of properties which are not essential to the operations of the business; and third, the equitable division of voting control of the new corporation, in view of the fact that the present bondholders who are to receive new bonds and preferred stock will be retaining a secured position as to half of their investment and a preferred position as to the other half.

These differences in opinion have been reconciled in the enclosed plan as a result of concessions made by each of the three groups for what is believed to be the best interests of all. With respect to the first point, the plan provides that the net income of the new corporation shall be divided into two equal parts, one of which shall be applied primarily to servicing the new Series U bonds and preferred stock, and the other primarily to servicing the new Series C bonds and preferred stock. With respect to the second point, the plan provides that the proceeds from liquidation of nonessential properties (whether originally Consumers, Union or Consolidated properties) shall be applied to the retirement of the new bonds and the preferred stock of either series, at the most ad-

vantageous prices obtainable. The normal effect of this provision should be to equalize within a reasonable period the respective amounts of the new series of bonds and preferred stock, and at the same time provide a market for securities owned by those who wish to liquidate their investment. With respect to the third point, the plan provides that the common stockholders of the new corporation will be entitled to elect five out of nine directors, and the preferred stockholders will be entitled to elect four directors (two to be elected by the holders of the new Series U preferred stock and two by the holders of the new Series C preferred stock), with the further provision that if the new corporation fails to meet specified minimum payments on the new bonds and preferred stock, the holders of the new preferred stock will be entitled to elect six of the nine directors, thus affording a means whereby the present bondholders can take over the management of the new corporation under conditions which would warrant such control.

In considering the manner in which these differences of opinion have been compromised in the enclosed plan, the bondholders should not lose sight of the major advantages of the plan, which are that all three properties will be actually consolidated and continue as an operating unit and that the new bonds are to be secured by a lien upon all three properties. In this connection it should be noted that Consolidated will make a valuable contribution to the new company in working capital, truck equipment, and

goodwill as a going concern. The Consolidated managers estimate that the value of the tangible assets which Consolidated will thus contribute to the new corporation will amount to several hundred thousand dollars.

In spite of the handicaps under which Consolidated has operated since May 24, 1935, when its petition for reorganization was filed, its earnings have shown a material improvement. For the calendar year 1936 the management reports an improvement in net income prior to bond interest and depreciation charges of 150% over the previous year. It is the opinion of this Committee that the acceptance of the enclosed plan of reorganization will be reflected in further improvements in earnings for the current and future years. We believe that this plan of reorganization offers the most satisfactory solution to a very involved problem.

If as we recommend, you desire to approve the plan, no affirmative action by you is necessary as the Committee will accept the plan on your behalf in the reorganization proceeding. Upon consummation of the plan you will be notified to surrender your certificate of deposit for the new securities to which you will be entitled.

If you do not want the Committee to accept the plan on your behalf, but do not want to withdraw your bonds from deposit (which would necessitate your paying your pro rata of the Committee's expenses to date), then you may advise the Committee in writing, within thirty days from date, of your dissent, and if so advised, the Com-

mittee will not accept the plan on your behalf; otherwise the Committee will assume that you approve the plan and are willing to have the Committee accept it for you.

If you wish to withdraw your bonds from deposit, you may do so by filing written notice of your intention with Title Insurance and Trust Company (Corporate Trust Department), as Depository, 433 South Spring Street, Los Angeles, California, within thirty days from the date of this letter and by paying your pro rata of the expenses of the Committee incurred to the date of your withdrawal, as to the amount of which the Depository will advise you upon request, and by surrendering your certificate of deposit, all as more specifically provided in Article III of the Union Rock Company Bondholders' Protective Agreement.

For your convenience, we are appending a summary of the plan, but, since any summary necessarily omits many details, we request you to read the enclosed copy of the plan in its entirety, and commend it to your favorable consideration.

Yours very truly,

UNION ROCK COMPANY

BONDHOLDERS' PROTECTIVE COMMITTEE

By F. B. BADGLEY,

COL. R. E. FRITH,

T. FENTON KNIGHT, and

WALTER S. TAYLOR,

As Members.

[For summary attached hereto, see next Exhibit.]

[EXHIBIT C]

[Letter from Union Bondholders' Committee omitted.]

SUMMARY OF PLAN OF REORGANIZATION*
TRANSFER OF ASSETS AND
CAPITALIZATION OF NEW CORPORATION

A new corporation will be formed, to which all of the assets of Consolidated Rock Products Co., Consumers Rock & Gravel Company, Inc., and Union Rock Company will be transferred. This new corporation will have the following capitalization:

- (1) \$1,507,000 principal amount of new cumulative income 5% bonds. The new bonds will be divided into Series U and Series C, comprising principal amounts of \$938,500 and \$568,500 respectively;
- (2) 30,140 shares of 5% preferred stock of the par value of \$50.00 per share. The preferred stock will be divided into Series U and Series C, comprising 18,770 and 11,370 shares respectively;
- (3) 425,718 shares of common stock of the par value of \$2 per share, of which
 - (a) 285,947 shares will be issued to the present preferred stockholders of the Debtor;
 - (b) 37,540 shares will be reserved for issuance upon the exercise of stock purchase warrants to be attached to the new preferred stock, Series U;
 - (c) 22,740 shares will be reserved for issuance upon exercise of stock purchase warrants to be attached to the new preferred stock, Series C;

- (d) 79,491 shares will be reserved for issuance upon exercise of stock purchase warrants to be issued to the holders of the present common stock of the Debtor.

TREATMENT OF EXISTING SECURITY HOLDERS

1. For each present \$1000 bond, holders of Union and Consumers bonds will receive the following securities (new Series U bonds and preferred stock being allocated to Union bonds and new Series C bonds and preferred stock being allocated to Consumers bonds):

- (a) \$500 principal amount of new bonds;
- (b) 10 shares of new preferred stock (par value, \$50 per share);
- (c) Warrants for the purchase of 20 shares of new common stock at any time within five (5) years, at prices ranging from \$2 during the first six months to \$6 in the fifth year.

2. Holders of present preferred stock of Consolidated Rock Products Co. will receive one share of new common stock for each share of such preferred stock held by them.

3. Holders of present common stock of Consolidated Rock Products Co. will receive, for each five shares of such stock held by them, a warrant for the purchase within three months of one share of new common stock at the price of \$1 per share.

ALLOCATION OF NET INCOME

The available net income of the new corporation, as defined in the plan, shall be divided into two equal parts. Such parts shall be applied separately to servicing the bonds and preferred stock of Series U and Series C,

respectively, according to the following schedule of priorities:

- (a) Payment of 5% cumulative interest on the bonds;
- (b) Maintenance of a 4% cumulative sinking fund for retirement of bonds;

*This summary is submitted for the convenience of the readers and is necessarily incomplete. Reference is made to the enclosed copy of the full Plan for details.

- (c) Payment of 5% dividends on the preferred stock;
- (d) Maintenance of a 4% cumulative sinking fund for preferred stock (commencing after retirement of bonds);
- (e) Any moneys remaining to be available for general corporate purposes, subject to certain limitations specified in the plan.

The corporation shall not pay dividends on the common stock without applying an equal amount to the retirement of preferred stock in addition to the sinking fund requirements with respect to such preferred stock.

PROVISIONS OF NEW BONDS AND TRUST INDENTURE

1. The bonds shall be dated as of April 1, 1937 and expressed to mature on April 1, 1957, and shall bear interest at the rate of 5% per annum, payable April 1 and October 1, but only out of available net income. Such interest shall be cumulative. The bonds may be called for redemption at par and accrued interest.

2. The bonds shall be secured by a trust deed and chattel mortgage on all the property to be acquired by the new corporation. (See 3 under miscellaneous.)

3. The bonds shall not bear coupons but shall be registered as to both principal and interest.

4. "Net income" and "available net income" shall be defined in the new indenture as defined in the plan.

5. The available net income after payment of interest is to be applied to the creation and maintenance of cumulative sinking funds for the retirement of \$37,500 principal amount of Series U bonds and \$22,500 principal amount of Series C bonds per year. Failure to meet annual sinking fund requirements shall not be an act of default.

6. With respect to interest payments on the bonds, events of default shall be deemed to exist only upon the following conditions:

- (a) If at the end of the second year of the term of the new bonds, interest paid on either series shall not have aggregated 4% of the principal amount of the new bonds then outstanding;
- (b) If at the end of the fifth year of the term of new bonds interest paid on either series shall not have aggregated 16% of the principal amount of new bonds then outstanding;
- (c) If during the sixth year of the term of the new bonds and during each year thereafter interest paid on the new bonds shall not have aggregated 5% per annum of the principal amount of the new bonds then outstanding.

In the event of default in interest payments, there is a provision for a period of 24 months of grace before foreclosure proceedings may be instituted.

DISPOSITION OF PROCEEDS OF SALE OF ASSETS

1. Moneys received from the liquidation of assets shall be used to purchase bonds of either series for retirement at the lowest price obtainable. If no bonds can be obtained at less than par, one-half of such moneys shall be applied to purchase preferred stock of either series at the lowest price obtainable, and the other half shall be used to call bonds of Series U and Series C in the ratio of the original principal amounts of the two series.

2. After the principal amounts of the two series of bonds shall be approximately equal, funds received from liquidation of assets shall be applied in the same manner as above to the retirement of the preferred stock of Series U and Series C.

3. After both the bonds of the preferred stock of the two series are approximately equal, proceeds from the liquidation of assets shall be applied to the retirement of new bonds of either series by purchase of redemption.

PREFERRED STOCK

1. Dividends on preferred stock of Series U and Series C shall be noncumulative until such time as bonds of the corresponding series have been fully retired and shall then become cumulative. The preferred stock of both series shall be redeemable at par plus accumulated dividends.

2. On the retirement of all the bonds of either Series U or Series C, the preferred stock of the corresponding series shall become entitled to the benefits of a cumulative earnings sinking fund sufficient to retire annually approximately 4% of the preferred stock of that series originally issued.

VOTING RIGHTS

1. The board of directors shall have nine members, of whom five shall be elected by the holders of the common stock, two by holders of the preferred stock, Series U, and two by the holders of the preferred stock, Series C.

2. On the occurrence of any of the following events, the holders of the preferred stock shall have the right to elect six of the nine directors (three to be elected by Series U, three by Series C and three by the common):

- (a) If, during any one of the first three years of the term of the bonds, at least \$45,210 has not been applied to interest payments;
- (b) If interest paid on either series of the new bonds in any one year after the third year shall have amounted to less than 5%;
- (c) If, after all the bonds have been retired, dividends on either series of preferred stock shall not have amounted to 5% in any one year.

3. The voting rights shall be restored to their original status upon the subsequent fulfillment of any of the above deficiencies:

4. The concurrence of at least a majority of the directors elected by the holders of the preferred stock shall be required in any of the following matters:

- (a) The authorization of the sale of assets subject to the indenture;
- (b) The determination of amounts necessary to maintain adequate working capital;
- (c) Any determination that net income is not available for bond interest or retirement, or preferred stock dividends or retirement, and as to any other purpose to which such net income shall be applied.
- (d) The approval of any salary in excess of \$9,500 per annum.

MISCELLANEOUS

1. Separate voting trusts shall be established for the preferred stock of Series U and Series C and participating certificates thereunder shall be issued to evidence the ownership of such preferred stock. The preferred stock will be placed in a voting trust only if the bondholder entitled thereto fails to indicate his contrary preference prior to the thirtieth day after confirmation of the plan.

2. Union bonds in the amount of \$102,500 and Consumers bonds in the amount of \$63,500, now owned by Consolidated Rock Products Co. shall be canceled.

3. On such terms as may be approved by the court, the new corporation may borrow not exceeding \$150,000, if necessary for working capital and payment of reorganization expense, and may secure such loan with a mortgage or trust deed covering the properties now owned by Consolidated Rock Products Co., superior to the lien of the new indenture.

4. To become effective the plan must be approved by the holders of two-thirds of the Union bonds, two-thirds of the Consumer's bonds and a majority of each class of stock of the three corporations involved, and confirmed by the court, but if the court shall determine that Consolidated, Union or Consumers is insolvent or that any class of stockholders will not be materially and adversely affected by the plan, then the plan may be confirmed without the consent of the *stockers* of Consolidated or Union or Consumers, or any class thereof not so affected, as the case may be.

[EXHIBIT G.]

Committee:
 W. D. Courtright
 Fred L. Dreher
 F. J. Gay
 Alfred Ginoux
 Guy Witter

Secretary:
 Harry R. Wiley,
 634 So. Spring St.,
 Los Angeles

Counsel:
 Gibson, Dunn & Crutcher,
 Los Angeles

Bondholders' Protective Committee

CONSUMERS' ROCK & GRAVEL COMPANY, INC.

First Mortgage Sinking Fund Gold Bonds

April , 1937.

To Holders of Deposit Receipts:

Under date of September 21, 1936, this Committee wrote you to the effect that it had, on June 1, 1936, filed a petition in intervention in the 77B bankruptcy proceedings involving Consolidated Rock Products Co., Union Rock Company, and Consumers Rock and Gravel Company, Inc., which petition proposed a plan of reorganization involving only the assets of Consumers Rock and Gravel Company, Inc. A copy of such petition, in which was included a copy of said separate Consumers plan of reorganization dated June 1, 1936, was enclosed with that letter.

We stated to you in said letter that we had at that time been unable to accept or to recommend to you any plan of reorganization up to then proposed by the Consolidated or Union interests and involving the continued operation of all of the properties as one unit, for the reason that

no such plan had up to then been proposed which provided for a division of future revenues as between the Consolidated, Union and Consumers interests on a basis which we believed to be commensurate with the comparative earning powers of the three sets of properties. Because we believed at that time that no agreement between the other interests could be reached, we then adopted and recommended to you the plan as set forth in the petition in intervention, which plan involved a complete separation of the Consumers properties from the Consolidated and Union properties.

Shortly after the submission to you of the separate Consumers plan dated June 1, 1936, a new series of conferences was begun between representatives of this Committee and its counsel and representatives of the Union and Consolidated interests, with the intent that one more final attempt should be made to agree upon a plan for all these companies. These negotiations have continued almost constantly during the last six months, and we are now happy to report to you that they have resulted in a plan which not only involves the complete consolidation of all three properties, but which also embodies what we consider to be an allocation of the future net income of such consolidated properties on a basis fair to the Consumers bondholders.

Reducing the formula of the proposed plan to its simplest terms, it has been agreed between the various representatives that a reorganization will be effected by transferring all of the properties (including the Consolidated properties not subject to either the Union or the Consumers indenture) to a new corporation and that the net

income of the new corporation shall be divided into two equal parts, one of which parts will be used for the service of the securities of the proposed new company to be issued to Consumers bondholders, and the other of which will be used for the service of the securities of the proposed new company to be issued to Union bondholders, any balance remaining to be applied to the general corporate purposes of the new company. The Consumers bonds represent approximately 38% and the Union bonds approximately 62% of the combined bonded indebtedness.

Your Committee believes that the plan now proposed successfully overcomes the objections which your Committee had raised to all prior plans submitted by the Consolidated and Union interests, and that therefore the necessity which prompted our submission to you of the June 1, 1936, plan of reorganization (involving the separation of the Consumers properties) has been removed.

We have, therefore, abandoned the plan dated June 1, 1936, and have adopted the Plan of Reorganization dated March 15, 1937, involving all three properties, a copy of which Plan of Reorganization dated March 15, 1937, is enclosed herewith, and is submitted for your consideration. This Plan of Reorganization, dated March 15, 1937, has also been adopted by the Union Rock Company Bondholders' Protective Committee and by the Board of Directors of Consolidated Rock Products Co. and is at this time also being presented to the security holders of those two companies for their consideration.

On _____, 1937, the enclosed Plan of Reorganization was filed with Bank of America National Trust and Savings Association, as depository, pursuant to Article IV of the Consumers Rock and Gravel Company,

Inc., Bondholders' Protective Agreement dated June 1, 1935.

The Plan of Reorganization now proposed provides that the new corporation shall have a capitalization of bonds, preferred stock of the par value of \$50 per share, and common stock of the par value of \$2 per share. The bonds and preferred stock are to be divided into two series: Series U and Series C. The two series of bonds will be identically secured by a new indenture to cover all of the properties of the new corporation, and the two series of preferred stock will have the same relative priority as to liquidation preferences. Consumers bondholders will receive for each \$1000 present Consumers bond: (a) a new \$500 Series C bond; (b) ten shares of new Series C preferred stock; and (c) warrants entitling the holder to purchase twenty shares of new common stock at any time during a period of five years at prices ranging from \$2 to \$6 per share. Union bondholders will receive the same except that their new bonds and preferred stock will be of Series U. Holders of preferred stock of Consolidated will receive one share of new common stock for each share of Consolidated preferred and holders of Consolidated common stock will receive for each 5 shares of Consolidated common a warrant entitling them to purchase one share of new common stock at \$1 per share at any time within 3 months from the date of the warrant.

We request that you bear in mind that the long delay in presenting this Plan of Reorganization to you is largely due to the extended negotiations which have been necessary in order to reconcile certain differences of opinion between this Committee and the Union Bondholders' Committee and the Directors and other representatives of the

Consolidated stockholders. These differences of opinion were inherent in the complexity of the interests. Not only were three different corporations involved, each with its own properties, but there are three groups of security holders, viz., Consumers bondholders, Union bondholders, and Consolidated stockholders, each of which has particular interests in one of the three sets of properties. Although the interests of these three groups are in some respects divergent, nevertheless all three properties, due to their having been operated as a unit for the past seven years, have necessarily become commingled to a degree which would have made the process of separation not only prolonged and expensive but to some extent disadvantageous to each of the three groups of security holders. Your Committee insisted upon such a separation only until an agreement fair to Consumers bondholders could be reached as to future allocation of net income.

The differences in opinion among the three groups have centered around three major points: first and already mentioned, the equitable allocation of net income to the servicing of the two new series of bonds and preferred stock in view of the fact that the major part of the tonnage during the past two years has been produced from the Consumers properties; second, the application to the retirement of the two series of new bonds and preferred stock, of proceeds which may reasonably be expected to be realized in the near future from the liquidation of properties which are not essential to the operations of the business; and third, the equitable division of voting control of the new corporation, in view of the fact that the present bondholders who are to receive new bonds and preferred stock will be retaining a secured position as to

half of their investment and a preferred position as to the other half.

These differences in opinion have been reconciled in the enclosed Plan of Reorganization as a result of concessions made by each of the three groups for what is believed to be the best interests of all. With respect to the first point, the Plan provides, as already stated, that the net income of the new corporation shall be divided into two equal parts, one of which shall be applied to servicing the new Series C bonds and preferred stock, and the other to servicing the new Series U bonds and preferred stock. With respect to the second point, the Plan provides that the proceeds from liquidation of nonessential properties (whether originally Consumers, Union or Consolidated properties) shall be applied to the retirement of the new bonds and the preferred stock of either series, at the most advantageous prices obtainable. Your Committee was willing to accept this provision for the reason that in all probability the Union properties will, in general, be the first to be liquidated. This provision should tend to equalize within a reasonable period the respective amounts of the new series of bonds and preferred stock, and at the same time will provide a market for those who wish to liquidate their investment. With respect to the third point, the Plan provides that the common stockholders of the new corporation will be entitled to elect five out of nine directors, and the preferred stockholders will be entitled to elect four directors (two to be elected by the holders of the new Series C preferred stock and two by

the holders of the new Series U preferred stock), with the further provision that the new corporation may not sell any of the properties to be subject to the new indenture or apply net earnings to capital improvements or additions without the affirmative vote of a majority of the directors to be elected by the preferred stockholders. If the new corporation fails to meet specified minimum payments on the new bonds and preferred stock, the holders of the new preferred stock will be entitled to elect six of the nine directors, thus affording a means whereby the present bondholders can take over the management of the new corporation under conditions which would warrant such control.

In considering the manner in which these differences of opinion have been compromised in the enclosed Plan, the bondholders should not lose sight of the major advantages of this Plan over the so-called separate Consumers plan. These are: first, that the separation plan, while it would have preserved all of the earnings of the Consumers properties for the Consumers bondholders, nevertheless would have involved long and costly legal proceedings, the probable necessity of subordinating the lien of the bondholders to a new loan for working capital, competition in the business from the present Consolidated and Union interests, and the difficulties attendant upon obtaining an efficient management; second, what we believe is a fair allocation of future net earnings of the combined properties has now been obtained for the Consumers bondholders; and, third, that all three properties will be actually

consolidated and continue as an operating unit and that the new bonds are to be secured by a lien upon all three properties. In this connection it should be noted that Consolidated will make a valuable contribution to the new company in working capital, truck equipment, and goodwill as a going concern. The Consolidated managers estimate that the value of the tangible assets which Consolidated will thus contribute to the new corporation will amount to several hundred thousand dollars.

In spite of the handicaps under which Consolidated has operated since May 24, 1935, when its petition for reorganization under Section 77B was filed, its earnings have shown a material improvement. For the calendar year 1936 the management reports an improvement in net income prior to bond interest and depreciation charges, of 150% over the previous year. It is the opinion of this Committee that the acceptance of the enclosed Plan of Reorganization will result in further improvements in earnings for the current and future years. We believe that this Plan of Reorganization offers the most satisfactory solution to a very involved problem.

If as we recommend, you are willing that the so-called separate Consumers' Plan, dated June 1, 1936, be abandoned and that the Plan of Reorganization, dated March 15, 1937, and hereby submitted be approved, you need take no affirmative action and the Committee will accept the enclosed Plan on your behalf in the reorganization proceeding. Upon consummation of the enclosed Plan

you will be notified to surrender your deposit receipt for the new securities to which you will be entitled.

If you do not want the Committee to accept the Plan on your behalf, but do not want to withdraw your bonds from deposit (which would necessitate your paying your pro rata of the Committee's expenses to date), then you may advise the Committee in writing, within thirty days from the date of this letter, of your dissent, and if so advised, the Committee will not accept the Plan on your behalf; otherwise the Committee will assume that you approve the Plan and are willing to have the Committee accept it for you, and the Committee will, pursuant to the authority granted to it in the Bondholders' Protective Agreement, file on your behalf with the Federal Court your written consent to and acceptance of the enclosed Plan.

If you wish to withdraw your bonds from deposit, you may do so by filing written notice of your intention with Bank of America National Trust and Savings Association (Corporate Trust Department), as Depositary, 660 South Spring Street, Los Angeles, California, within thirty days from the date of this letter and by paying your pro rata of the expenses of the Committee incurred to the date of your withdrawal, as to the amount of which the Depositary will advise you upon request, and by surrendering your deposit receipt, all as more specifically provided in Article IV of the Consumers Rock and Gravel Company, Inc. Bondholders' Protective Agreement dated June 1, 1935.

Seventy per cent of all of the Consumers bonds outstanding are now on deposit with this Committee, and the Committee is at this time also addressing the holders of undeposited bonds recommending that they be deposited subject to the enclosed Plan.

In the event that the requisite percentage of all Consumers bondholders shall so accept the Plan and if such Plan is finally confirmed by the Court, your bonds now on deposit, together with all of the other deposited bonds, will be dealt with as provided by the Plan. Section 77B of the Bankruptcy Act provides that a plan of reorganization so adopted and confirmed shall be binding upon all creditors affected, whether or not they shall have accepted the same.

For your convenience, we are appending a summary of the enclosed Plan, but, since any summary necessarily omits many details, we request that you read the enclosed copy of the Plan in its entirety, and we commend it to your favorable consideration.

Yours very truly,

CONSUMERS ROCK AND GRAVEL
COMPANY INC. BONDHOLDERS'
PROTECTIVE COMMITTEE

By Wm. D. Courtright
Fred L. Dreher
F. J. Gay
Guy Witter

As a majority of the members thereof.

[For summary see preceding Exhibit C.]

[EXHIBIT L.]

CONSOLIDATED ROCK PRODUCTS CO.

General Offices
2730 South Alameda Street
Los Angeles, Calif.

Telephone

Adams 3111

Counsel:

Latham, Watkins & Bouchard

To the Stockholders of

CONSOLIDATED ROCK PRODUCTS CO.:

Your Board of Directors is glad to be able to advise you that a Plan of Reorganization which preserves the stockholders' equity and reduces annual fixed charges, has been worked out after many conferences with the Protective Committees representing bondholders of Union Rock Company and Consumers Rock & Gravel Company, Inc. We submit herewith a copy of that Plan, together with a brief summary thereof, forms for acceptance and a letter of transmittal.

This Plan was filed with the United States District Court on April, 1937. It contemplates the formation of a new company to be known as the Consolidated Rock Company, which will have the following capitalization:

\$1,507,000 5% First Mortgage Bonds

30,140 shares of 5% Preferred Stock

425,718 shares of \$2.00 par value Common Stock.

The holders of Union Rock Company and Consumers Rock & Gravel Company, Inc. bonds will receive a \$500.00 bond and ten shares of preferred stock for each \$1,000.00

principal amount of the bonds they now hold. To each share of this preferred stock will be attached warrants entitling the holder to purchase, at any time within five years after their date, two shares of the new common stock at prices advancing from \$2.00 per share during the first six months of said period to \$6.00 per share in the fifth year.

The Preferred Stockholders of Consolidated Rock Products Co. will receive one share of the new Common Stock for each share of Preferred Stock they now hold, without payment of any kind.

The Common Stockholders will receive warrants entitling them to purchase within three months after their date, one share of new Common stock at a price of \$1.00, for each five shares of the Common Stock they now hold.

We urge you to read the Plan carefully and direct your attention to the following salient features:

(1) Bondholders are cancelling approximately \$650,000.00 of delinquent interest.

(2) The interest rate on the present bonds is 6% and on a fixed basis. The interest rate on the new bonds will be 5% and on a cumulative earnings basis.

(3) Maximum fixed charges are reduced \$105,490.00 per year and even considering the dividend requirements on the new preferred stock as fixed charges, they are still reduced \$30,140.00 per year.

(4) The present bonds are being converted into half bonds and half preferred stock and the equity remains in the stockholders.

(5) The new corporation will not be in default under the new bond indenture so long as \$30,000.00 interest is paid bondholders in each of the first two years and \$60,000.00 in each of the following three years.

(6) There is no default for failure to meet sinking fund payments.

(7) Sinking fund requirements can be met by the Company in bonds or preferred stock at par, regardless of their cost to the Company.

(8) Unnecessary properties may be disposed of and the proceeds used to purchase bonds and then preferred stock for cancellation.

(9) All of the assets of the main subsidiaries will be in the new corporation and those subsidiaries will be dissolved.

(10) Control of the new corporation is left in the hands of the new common stockholders so long as the Company is able to meet certain minimum requirements.

Before the Plan can be confirmed by the Court, it will be necessary to obtain the written acceptance thereof by the bondholders and stockholders as provided in the Plan and as set forth in the summary thereof. The respective Bondholder's Committees are endeavoring to obtain the necessary acceptance of the Plan from their bondholders as quickly as possible. If you approve of the Plan, kindly fill in and execute the enclosed acceptance and letter of transmittal and send them, with your stock certificates

endorsed in blank, to the Citizens National Trust & Savings Bank. The self-addressed envelope is enclosed for your convenience. The bank is acting as Escrow Agent in connection with the exchange of stock in reorganization.

As soon as the necessary acceptances of the Plan by both bondholders and stockholders are obtained, the Plan should be confirmed by the Court and the reorganization promptly effected. When it is, your new stock will be sent to you by the Citizens Bank.

If any part of the Plan is not clear to you, or if there is any information which you desire, kindly write or telephone Mr. Robert Mitchell, Secretary of the Company, at the main office of the Company in Los Angeles. If you have any objections to the Plan, you will be given an opportunity to be heard on those objections at a hearing which will be conducted pursuant to an order of the Court and held prior to the confirmation of the Plan. A notice of the time and place of holding that hearing will be sent to you.

Stockholders who have not had experience with reorganization plans may find it difficult to realize the time and effort which have been spent and the delays and disappointments which have been encountered by the management and the Board of Directors in obtaining a plan which would keep Consolidated intact. At times the task seemed almost hopeless, but through unfailing patience and with constructive effort on the part of all concerned the goal has been achieved. While the Plan as worked

out appears to be quite complicated, in principal it is quite simple. It was necessary to include many provisions to satisfy both Bondholders' Committees and these provisions tend to give the impression of complexity.

Copies of the Plan have been given to the Consolidated Rock Company stockholders committee of which Mr. Horace G. Miller is chairman.

Your Board of Directors feels that the Plan is practical, preserves the stockholders' equity, and gives them an opportunity to realize on their investment in the Company. Its acceptance is recommended. There will be no expense on your part in connection with the reorganization.

Very respectfully yours,

ROBT. MITCHELL, Secretary

By order of the Board of Directors.

[Endorsed]: Filed R. S. Zimmerman Clerk at 10 min. past 10 o'clock, Apr. 28, 1937 A. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

Objections to Plan of Reorganization Submitted By Consolidated Rock Products Co., Union Rock Company Bondholders' Committee, and Consumers Rock & Gravel Company, Inc., Bondholders' Committee, dated March 15, 1937, and filed herein April 8, 1937.

To the Honorable Judges of the United States District Court, for the Southern District of California, Central Division:

Comes now E. Blois duBois, hereinafter referred to as "objector", and by way of objection to the plan of reorganization of the above-named companies submitted by Consolidated Rock Products Co., Union Rock Company Bondholders' Committee, and Consumers Rock & Gravel Company, Inc., Bondholders' Committee, dated March 15, 1937, and filed in these proceedings April 28, 1937, respectfully represents to the Court as follows:

I.

For convenience Consolidated Rock Products Co. will hereinafter be referred to as "Consolidated", Consumers Rock & Gravel Company, Inc. as "Consumers", and Union Rock Company as "Union".

II.

That objector is the owner and holder of Union Rock Company First Mortgage Serial and Sinking Fund Gold Bonds, dated as of September 1, 1927, in the principal amount of \$150,000, and of Consumers Rock & Gravel

Company, Inc. First Mortgage Sinking Fund Gold Bonds dated as of July 1, 1928, in the principal amount of \$31,000. As the owner and holder of the aforesaid bonds, objector is a party in interest in these proceedings.

III.

Objection No. I:

Objection is first made to the inclusion in the plan of reorganization of Consolidated, its assets or stockholders, the stockholders of Union and Consumers, or any of them, and in this connection objector alleges that he is informed and believes, and upon such information and belief alleges, that Consumers and Union, debtors herein, are, and each of them is, insolvent within the meaning of the Bankruptcy Act of 1898, as amended and supplemented, and of Section 77(b) thereof; that the aggregate of the property of Consumers and of Union, exclusive of any property which they or either of them may have conveyed, transferred, concealed or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay their, or either of their creditors, is not and will not at a fair valuation be sufficient in amount to pay the debts of Consumers, in the one case, and of Union in the other case; that therefore the stockholders of Consumers and the stockholders of Union (being Consolidated Rock Products Company, as the owner and holder of all of the outstanding capital stock of each of said companies), have no interest or equity whatever in the property and assets of either of said companies.

Objector is further informed and believes, and upon such information and belief alleges, that the true value of the assets of each of said companies is not truly reflected in the financial statements which have been

filed in these proceedings, and that an independent appraisal of the assets of said companies will disclose that the value thereof is in each case in an amount less than the principal and accrued interest of the outstanding bonds.

For the reasons above set out, the inclusion of Consolidated, the sole owner and holder of stock of Union and Consumers, in any plan of reorganization involving said companies is inequitable and unfair to objector and other holders of bonds of said companies.

IV

Objection No. II:

The proposed plan is confiscatory as to the holders of either Union or Consumers' bonds in that:

1. It contemplates that they shall be compelled to accept new bonds equal in principal amount to only one-half of their present holdings.

2. No provision whatever is made to discharge or otherwise recognize accrued and unpaid interest on outstanding bonds.

3. The proposed issue to the bondholders of preferred stock, with common stock purchase warrants attached, will not fairly compensate the present bondholders on account of the bond principal, plus accrued interest, which they will be compelled to lose.

4. The plan contemplates that unsecured creditors of Consolidated, Union and Consumers shall not be affected by the plan of reorganization, and in effect grants such unsecured creditors a preferred position over the present bondholders of Consumers and Union.

5. By the provisions of Paragraph 13, Article VI of the plan, the rights of minority bondholders may be further prejudiced and ignored through amendment of the proposed new indenture or release of the same in a manner or for a consideration approved by 75 per cent in principal amount of the new bonds.

6. The common stock of the proposed new company is offered to the present bondholders at a price which in effect prefers the present stockholders of Consolidated over said bondholders.

V.

Objection No. III:

The proposed plan is misleading and unfair and inequitable as to the present bondholders of Union and Consumers in that:

1. While it is first made to appear that all net income of the new company will be set aside to service and/or redeem the new bonds and new preferred stock the plan permits use of net income for general corporate purposes prior to redemption of the proposed new bonds and new preferred stock.

2. The plan contemplates that the present bondholders of Union and Consumers may be placed in the position of junior lien holders of the new corporation through the execution, pursuant to Article XI of the plan, of a prior encumbrance; and the provisions of Article VI of the proposed plan permit the Union Bondholders' Committee and the Consumers Bondholders' Committee, acting jointly, to authorize liens prior to that which is offered the present bondholders.

3. The definition of "net income" as used in the proposed plan is unfair and inequitable in that it permits deduction from gross income of the expense of alterations, improvements and additions prior to any application of income to servicing of the proposed new bonds and preferred stock, and likewise permits the directors of the proposed new corporation in their sole discretion to deduct such further amount from gross income as they may deem necessary to create and maintain adequate working capital. Said definition deprives the proposed new bonds of all certainty of income and favors those who may become common stockholders of the new company over those who are now its first lien holders.

4. Paragraph 7 of Article VI of the proposed plan leaves to the entire discretion of the board of directors of the new company the determination of what shall constitute "available net income" for application to the new bonds and preferred stock, and renders the income which may be anticipated by the existing bondholders indefinite and uncertain, and likewise from a practical standpoint, leaves to the board of directors the power to determine that no event of default under the indentures securing the bonds actually exists at any time.

VI.

Objection No. IV:

The proposed plan of reorganization is further unfair and inequitable in that:

1. The provisions of Paragraph 10 of Article VI of the proposed plan with respect to events of default under the proposed new indenture are unconscionable in that;

a. Excessive periods of nonpayment of interest are permitted during which the remedy of foreclosure is denied to the bondholders.

b. Excessively low rates of interest are permitted without remedy to the bondholders.

c. The two-year period of grace, as to any default which may occur indefinitely postpones any remedy to the bondholders.

2. Paragraph 11, Article VI of the plan permits the proceeds received from sale or condemnation of property securing the proposed new bonds to be diverted to purposes other than the redemption of said bonds.

3. The proposed voting trust agreements of Article IX of the plan insure control of the proposed new corporation in the hands of a management which in large measure is responsible for the present condition of the debtor companies.

4. While Article X of the proposed plan provides for cancellation of the existing bonds of Union and Consumers held by Consolidated, no provision is made under which Consolidated shall contribute to the new company any excess indebtedness over and above the principal amount of said bonds, plus accrued interest, owing by it to Union and Consumers. In this connection objector is informed and believes and upon such information and belief alleges that Consolidated is indebted to Union and Consumers in an amount far in excess of the amount of the bonds of said companies now held by Consolidated and which are proposed to be cancelled in the plan of reorganization, and the extent of this indebtedness can only be determined by a fair and impartial audit of the books of the three debtor corporations.

5. Paragraph 11, Article VI of the plan by implication will permit the corporation to purchase the new bonds in the open market with income which should be applied to discharge of the existing bonded indebtedness.

6. A proposed division of income of the new company in equal proportions between the bondholders of Union and Consumers is unfair and disproportionate to the ratio of the existing bonded indebtedness of the company.

VII.

Objector is informed and believes, and upon such information and belief alleges, that on or about March 6, 1929, being a date subsequent to the issuance and sale of Consumers' bonds, Consolidated, one of the debtors herein, acquired all of the outstanding capital stock of Consumers (with the possible exception of directors' qualifying shares) from the then holders thereof, and that since such time Consolidated has been, and now is, the holder and owner of all of such issued and outstanding capital stock of Consumers (with the possible exception of directors' qualifying shares).

VIII.

Objector is informed and believes, and upon such information and belief alleges, that on or about July 15, 1929, being a date subsequent to the issuance and sale of said Union bonds, Consolidated acquired all of the outstanding capital stock of Union (with the possible exception of directors' qualifying shares) from the then holders thereof and that since such time Consolidated has been and now is the holder and owner of all of such issued and outstanding capital stock of Union (with the possible exception of directors' qualifying shares).

IX.

Objector is informed and believes, and upon such information and belief alleges that on or about July 15, 1929, Consolidated, as party of the one part, and Union, Consumers and Reliance Rock Company, a wholly owned subsidiary of Union, as parties of the other part, entered into that certain Operating Agreement dated July 15, 1929, a copy of which is attached hereto and made a part hereof, marked Exhibit "A". Since the date of entering into said Operating Agreement Consolidated has held and maintained the custody and possession of all of the properties of Union and Consumers, and has used and operated said properties, and has collected the income therefrom, and has applied said income to the uses of Consolidated, in all respects as if said properties belonged to Consolidated.

X.

Objector is informed and believes, and upon such information and belief alleges, that on or about February 16, 1933 the parties to said Operating Agreement dated July 15, 1929 purported to enter into a modification of said Operating Agreement, a copy of which purported modification of Operating Agreement is attached hereto and made a part hereof, marked Exhibit "B". That said parties entered into, or purported to enter into, said purported modification of Operating Agreement without the consent of the holders of Union or Consumers bonds or of the trustees under the Union and Consumers trust indentures securing the same. That at the time said purported modification of Operating Agreement dated February 16, 1933 was purported to have been entered into all of the outstanding capital stock of Union and Consumers was owned, and for a long time prior thereto had

been owned, by Consolidated, the directors of Union and Consumers were elected by Consolidated as the owner of all of the outstanding capital stock of Union and Consumers; and the officers of Union, Consumers and Consolidated were identical. Objector alleges that said purported modification of Operating Agreement dated February 16, 1933, was entered into in derogation of the rights of Union and Consumers and of their creditors, particularly the holders of Union and Consumers bonds, and with the intent to deprive such creditors of Union and Consumers of their rights as such creditors. That said purported modification of Operating Agreement was, and is, without consideration and should be, and is, void ab initio and of no effect whatsoever in so far as it purports to change, amend or alter the rights of Union or Consumers, or their creditors, against Consolidated arising out of said operating Agreement dated July 15, 1929, or out of an accounting thereunder, and said purported modification of Operating Agreement should be declared void and of no force and effect ab initio.

XI.

Objector is informed and believes, and upon such information and belief alleges, that since the date of acquisition by Consolidated of all of the outstanding capital stock of Union and Consumers, Consolidated has taken over, used, operated and managed all of the business and property of Union and Consumers and from time to time has disposed of portions of the same, and has made renewals of such property so disposed of, and has wrong-

fully and negligently merged and commingled the business, properties and income of Union and Consumers with the business, properties and income of Consolidated, and the properties of Consumers with the properties of Union, and vice versa, and has wrongfully failed and neglected properly to segregate and keep separate and apart such business and properties of Union and Consumers, and has wrongfully and negligently and in derogation of the rights of Union and Consumers, and of the creditors of Union and Consumers, converted to its own use such business and properties of Consumers and Union and the income accrued and accruing therefrom.

XII.

In connection with the foregoing objections and allegations objector respectfully suggests that the proposed plan of reorganization be modified in the following respects:

1. That Consolidated, its assets and stockholders, together with said company as the sole stockholder of Union and Consumers, be entirely eliminated from the plan of reorganization.

2. That all assets of Union and Consumers, whether or not now subject to the liens of the indentures securing the outstanding bonds of said companies, be segregated and transferred to the proposed new company.

3. That bearer bonds of the new company be authorized in an amount equivalent to the principal amount of bonds of Union and Consumers presently outstanding, and that said new bonds be issued and delivered to the existing bondholders of said companies dollar for dollar.

4. That said new corporation be organized with an authorized capital stock, consisting of common shares only, sufficient to:

- a. Permit one share thereof to be issued for each \$100.00 of interest accrued and unpaid on account of the presently outstanding bonds.
- b. Permit one share thereof to be issued to the holders of presently outstanding bonds of Union and Consumers on the basis of one share for each \$100.00 principal bonded indebtedness.
- c. Insure suitable treasury stock for future financing.

5. That common shares of the new corporation be issued and delivered to the present bondholders of Union and Consumers on the basis provided in the preceeding paragraph.

6. That provisions be made in the proposed new indenture securing the proposed new bonds, and in said bonds themselves, that no default shall exist thereunder by reason of failure of the corporation to pay interest during the period of one year from date of issue, or such other period of time as to the Court may seem advisable under existing circumstances.

7. That working capital for said new company be provided from the proceeds of liquidation of such claims as Union and Consumers may now have against Consolidated on account of the operating agreements hereinbefore referred to, from the sale of the remaining authorized common shares of the new corporation, in whole or in part, and by such borrowings as the future board of directors of said new corporation may authorize.

WHEREFORE, objector prays that orders be made and entered herein as follows:

1. Sustaining the objections herein made to the plan of reorganization submitted by Consolidated, the Union Committee, and the Consumers' Committee, filed herein April 28, 1937.

2. Adjudicating that all net income of Consolidated derived from the operation and management of the properties subject to the trust indentures securing said Union and Consumers' bonds is subject to the lien and operation of said trust indentures, and directing Consolidated to sequester all such net income for the use and benefit of the trustees under said trust indentures, and of the holders of Union and Consumers' bonds secured thereby, as their interests may appear, subject only to the use of such property by Consolidated in accordance with the orders of this Court.

3. Referring to a special master the following matters:

- a. The segregation and identification of all of the properties, real and personal, which are subject to the trust indenture dated July 1, 1928, between Consumers Rock & Gravel Company, Inc., and Bank of Italy National Trust & Savings Association, as trustee, (of which Bank of America National Trust & Savings Association is the successor), and all of the properties, real and personal, which are subject to the trust indenture dated September 1, 1927, between Union Rock Company and Title Insurance and Trust Company, as trustee.

b. The cancellation of said purported modification of Operating Agreement dated February 16, 1933, and the termination of said Operating Agreement dated July 15, 1929.

c. Rendition of an account as between Union and Consumers, on the one hand, and Consolidated on the other hand, with respect to the property, assets and business of Union and Consumers held, possessed, and managed by Consolidated, and of the rents, issues, income and proceeds thereof, and/or the rendition of an account on termination of the operating agreement dated July 15, 1929, and on the basis of the intercompany accounts, as between Union and Consumers, on the one hand, and Consolidated, on the other.

d. The determination of the true value of all properties and assets of Union and Consumers as so segregated.

4. That an impartial and qualified appraiser be appointed by the Court to appraise all of the properties and assets, real and personal, of Union and Consumers, as segregated and identified by the special master, and to report to the Court prior to final hearing upon the proposed plan of reorganization and objections thereto, to the end that the Court may be fully advised in the premises.

5. That an independent auditor and accountant be appointed by the Court and authorized to make a full and complete examination and report of the inter-company business relations between Union and Consumers, on the one hand, and Consolidated, on the other hand, and to report to the special master and the Court the amount of indebtedness owing by any one of said companies to any of the others.

6. Authorizing your objector to circulate the foregoing objections, and the foregoing proposed modification of the plan of reorganization submitted by Consolidated, the Union Bondholders' Committee, and the Consumers' Bondholders' Committee, among all holders of Union and Consumers bonds, and requiring the bondholders' committees of Union and Consumers, and the trustees under the Union and Consumers trust indentures, to file with the Court for the purpose of such circulation a true and complete list of the names and addresses of the holders of such bonds.

7. Setting a date for the hearing of these objections and the suggested modifications in the plan of reorganization submitted by Consolidated, the Union Bondholders' Committee, and the Consumers' Bondholders' Committee, and fixing the notice to be given of such hearing.

8. Such other and further orders, general and specific, which may be necessary in the premises to afford such further relief as to the Court seems meet and proper.

Dated: Los Angeles, California, August 20th, 1937.

E. Blois duBois
Objector

MOTT, VALLEE & GRANT

By Kenneth E. Grant

Attorneys for Objector

John G. Mott

Paul Vallee

Kenneth E. Grant

[For Exhibits A and B hereto attached see Operating Agreement and Modification of Operating Agreement attached to Master's Report.]

STATE OF CALIFORNIA,)

) ss.

County of Los Angeles,)

E. BLOIS duBOIS being by me first duly sworn, deposes and says: that he is the Objector in the above entitled action; that he has read the foregoing Objections to Plan of Reorganization submitted by Consolidated Rock Products Co., etc. and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

E. Blois duBois

Subscribed and sworn to before me this 20th day of August, 1937

[Seal]

Katherine Spengler

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 46 min. past 4 o'clock Aug. 25, 1937 P. M. By F. Betz, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

No. 25816-H

PETITION FOR HEARING FOR PROPOSAL,
CONSIDERATION AND CONFIRMATION OF
THE PLAN OF REORGANIZATION FOR CON-
SOLIDATED ROCK PRODUCTS CO., UNION
ROCK COMPANY AND CONSUMERS ROCK
& GRAVEL COMPANY, INC., DATED MARCH
15, 1937.

TO THE HONORABLE THE JUDGES OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALI-
FORNIA, CENTRAL DIVISION:

This petition of CONSOLIDATED ROCK PROD-
UCTS CO., Debtor herein; and F. B. Badgley, Colonel
R. E. Frith, T. Fenton Knight, and Walter S. Taylor,
as the UNION ROCK COMPANY BONDHOLDERS'
PROTECTIVE COMMITTEE constituted by and act-
ing under Union Rock Company Bondholders' Protective
Agreement dated as of May 23, 1935, between said Com-
mittee and such holders of First Mortgage Serial and Sink-
ing Fund Gold Bonds of Union Rock Company as have be-
come parties thereto in the manner therein provided; and
Wm. D. Courtright, Fred L. Dreher, F. J. Gay, Alfred
Ginoux, and Guy Witter, as the CONSUMERS ROCK
& GRAVEL COMPANY, INC., BONDHOLDERS'
PROTECTIVE COMMITTEE constituted by and acting
under Consumers Rock & Gravel Company, Inc., Bond-
holders' Protective Agreement dated June 1, 1935, be-
tween said Committee and such holders of First Mortgage
Sinking Fund Gold Bonds of Consumers Rock & Gravel

Company, Inc., as have become parties thereto, in the manner therein provided (said Debtor and said bondholders' committees being hereinafter sometimes referred to as "petitioner"), respectfully states:

I.

That under date of April 16, 1937 petitioners filed herein their petition submitting a Plan of Reorganization dated March 15, 1937 and under date of April 23, 1937 the Honorable Harry A. Hollzer, Judge of the above entitled Court, signed an order authorizing the submission of said Plan of Reorganization to the creditors and stockholders of debtor, Consolidated Rock Products Co., and its subsidiaries, Union Rock Company and Consumers Rock & Gravel Company, Inc.

II.

That the securities of debtor and its said subsidiaries outstanding at the present time are as follows:

(a) Consolidated Rock Products Co.

- (1) 285,947 shares of preferred stock, without par value.
- (2) 397,455 shares of common stock, without par value.

(b) Union Rock Company

- (1) \$1,979,500, principal amount of First Mortgage Serial and Sinking Fund Gold Bonds, \$102,500, principal amount of which is owned by Consolidated Rock Products Co. and the balance is in the hands of the public.
- (2) 160,000 shares of Class "A" capital stock.
- (3) 400,000 shares of Class "B" capital stock.

(c) Consumers Rock & Gravel Company, Inc.

(1) \$1,200,500 principal amount of First Mortgage Sinking Fund Gold Bonds, \$63,500, principal amount of which is owned by Consolidated Rock Products Co. and the balance is in the hands of the public.

(2) 120,328 shares of common capital stock.

All of the aforesaid capital stock of Union Rock Company and Consumers Rock & Gravel Company, Inc. is owned either directly or indirectly by Consolidated Rock Products Co.

III.

That since the execution and under the authority of said order petitioners have submitted to all known creditors and stockholders of said debtor and its said subsidiaries the said Plan of Reorganization, letters of explanation, summary of said Plan of Reorganization, forms of written acceptance of said Plan and letters of transmittal, all in the form attached to said petition dated April 16, 1937 and approved in said order of April 23, 1937.

IV.

That there are no creditors of either Consolidated Rock Products Co. or its two said subsidiaries other than current creditors and said bondholders. In this connection, petitioners state that neither said Union nor Consumers has any current creditors but that such current creditors as there are, are those of Consolidated. Further, in this connection, Consolidated Rock Products Co., one of the petitioners, states that the said bonds outstanding are direct obligations only of the said Companies which issued them and have not been assumed by Consolidated. That

as of the date of this petition said Plan of Reorganization dated March 15, 1937 has been accepted in writing by the various security holders as follows:

(a) Consolidated Rock Products Co.

- (1) 175,196 shares of preferred stock or 61.2 percentage.
- (2) 197,200 shares of common stock or 49.6 percentage.

(b) Union Rock Company

- (1) \$1,358,500 in principal amount, or 68.63 percentage.
- (2) All of the outstanding capital stock of both classes.

(c) Consumers Rock & Gravel Company

- (1) \$867,500 in principal amount, or 72.3 percentage.
- (2) All of the outstanding common capital stock.

V.

That the said Plan of Reorganization dated March 15, 1937, which is hereby proposed and which has been approved by more than 25% in amount of a class of creditors and more than 10% in amount of all claims against the debtor and its subsidiaries whose claims would be affected by the Plan, provides in general for the transfer of all of the properties of Consolidated, Consumers and Union to a new corporation which is to be organized for the purpose, with a capital structure consisting of new bonds, new preferred stock, and new common stock. The aggregate principal amount of the new bonds is to be one-half of the aggregate principal amount of Consumers and

Union bonds outstanding in the hands of the public, excluding the Consumers and Union bonds held by Consolidated. Such new bonds are to be secured by a new indenture covering substantially all of the properties of the new corporation. The new preferred stock is to be of the par value of \$50 per share, and its aggregate par value will equal the remaining one-half of the principal amount of the bonds of Union and Consumers outstanding in the hands of the public as aforesaid. The new common stock is to be of the par value of \$2.00 per share. The new bonds and the new preferred stock are each to be divided into two series, designated Series U and Series C, respectively. Each holder of a \$1,000 present Union bond will be entitled to receive a new \$500 Series U bond and 10 shares of new Series U preferred stock, together with warrants entitling him to purchase 20 shares of new common stock at any time during a period of five years at prices ranging from \$2 to \$6 per share. Each holder of a \$1,000 present Consumers bond will receive the same securities as the holder of a \$1,000 Union bond, except that his new bonds and preferred stock will be of Series C. Each holder of present preferred stock of Consolidated will be entitled to receive one share of new common stock for each share of such preferred stock, and each holder of present common stock of Consolidated will be entitled to receive for each 5 shares of such present common stock a warrant entitling him to purchase one share of new common stock at any time within three months after the date of such warrant, at the price of \$1 per share.

The new bonds are to be dated as of April 1, 1937, and are to mature on April 1, 1957, and are to bear interest from April 1, 1937, regardless of the date of actual consummation of the Plan, at the rate of five per cent

per annum, payable out of available net income as defined in the Plan, but such interest shall be cumulative. A sinking fund for the retirement of the new bonds is provided out of available net income, sufficient to retire annually approximately four per cent of the principal amount of the new bonds originally issued, on a cumulative basis. Dividends on the new preferred stock are to be at the rate of five per cent per annum of its par value and are to be noncumulative until such time as the corresponding series of new bonds shall have been retired, and thereupon shall become cumulative. A sinking fund for the retirement of the new preferred stock is provided, which will not operate until the corresponding series of the new bonds has been retired, and will then be sufficient to retire annually on a cumulative basis approximately four per cent of the amount of new preferred stock originally issued.

The available net income of the new corporation, as defined in the Plan, is to be divided into two equal parts, one of which is to be applied to servicing the new Series U bonds and preferred stock, and the other to servicing the new Series C bonds and preferred stock. Provision is also made for the application of proceeds to be received from the sale of nonessential properties, to the retirement of new bonds and preferred stock at the most advantageous prices obtainable, in a manner which should tend to equalize within a reasonable time the amounts of the respective series of the new bonds and preferred stock outstanding.

The voting rights on the stock of the new corporation will be divided in such a way that the holders of the new common stock will be entitled to elect five out of nine directors, and the holders of each of the series of new preferred stock will be entitled to elect two directors, with the result that the persons who are now stockholders of Consolidated will be entitled to elect five out of nine directors of the new corporation, and the persons who are now bondholders will be entitled to elect four out of the nine directors of the new corporation. The Plan further provides that if the new corporation fails to make certain minimum payments by way of interest on the new bonds or dividends on the new preferred stock, the holders of the new preferred stock will become entitled to elect six out of the nine directors, and the common stockholders of the new corporation will then be entitled to elect three directors, thus affording to persons who are present bondholders the opportunity of obtaining voting control of the new corporation under circumstances which would appear to warrant such control.

VI.

That the Plan provides that the following obligations shall be paid in full:

- (a) All current creditors;
- (b) All claims of the United States of America, if any;
- (c) All cost, expense, attorneys' fees, committees' fees and kindred items approved by the Court, either in cash or in such securities as may be acceptable to such parties.

VII.

That petitioners believe and request that the creditors and stockholders should for the purposes of the Plan and its acceptance be classified as follows:

(a) Consolidated Rock Products Co.

- (1) Holders of 285,947 shares of preferred stock, without par value.
- (2) Holders of 397,455 shares of common stock, without par value.

(b) Union Rock Company

- (1) Holders of \$1,979,500, principal amount of First Mortgage Serial and Sinking Fund Gold Bonds.
- (2) 160,000 shares of Class "A" capital stock.
- (3) 400,000 shares of Class "B" capital stock.

(c) Consumers Rock & Gravel Company, Inc.

- (1) Holders of \$1,200,500, principal amount of First Mortgage Sinking Fund Gold Bonds.
- (2) Holders of 120,328 shares of common capital stock.

VIII.

That due to the number of securities of Consolidated, Union and Consumers outstanding, the extent of the public dealing therein and the insufficiency of any available accurate record showing the transfers thereof, the filing of a statement with respect to the purchase or transfer of said securities by those accepting the Plan would be impractical.

IX.

That under date of November 15th, 1935 the debtor and said subsidiaries filed a petition herein showing the proposed revision of certain unexpired leases thereof; that under date of February 6, 1936 this Honorable Court entered its order approving the modification of said leases in the manner set forth in said petition; that under date of October 11, 1935 this Honorable Court entered its order permitting the cancellation of the Union-Bradbury Estate Company lease and that there are no other executory contracts other than the commitments which the debtor has made in the operation of its business subsequent to the filing of the original petition herein.

X.

That petitioners believe and therefore allege that said Plan of Reorganization is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders, and is feasible; that it complies with the provisions of Subdivision (b) of Section 77B of the Bankruptcy Act and that it is unnecessary to comply with the provisions of Subdivision (e), Clause (2) of said Section because neither the debtor nor either of its said subsidiaries is a public utility corporation, wholly intra-state in character or is a utility subject to the jurisdiction of a regulatory commission or commissions, or other regulatory authority or authorities.

That petitioners believe that prior to the date of hearing a majority of the common capital stock of Consolidated will have accepted the Plan of Reorganization. Even though such acceptance is not then in, petitioners believe that the Plan of Reorganization should be confirmed by this Honorable court without it.

XI.

That objections have been filed to said Plan of Reorganization on behalf of an individual who is alleged to own bonds of both said subsidiary Companies; that said objector has asked for a hearing on his said objections and that petitioners request that said objections and any others which may be filed to said Plan be heard at the time set in the order granted pursuant to this petition.

WHEREFORE, petitioners pray that an order be immediately entered herein, setting a date and time of a hearing for the purpose of the proposal, consideration and confirmation of the said Plan of Reorganization, dated March 15, 1937, upon such notice as the Court may prescribe and that immediately following said hearing an order be entered herein as follows:

(A) Dividing the creditors and stockholders for the purpose of the Plan of Reorganization and its acceptance into the classes according to the nature of their respective claims and interest as prayed for in the petition as follows:

(a) Consolidated Rock Products Co.

- (1) Holders of 285,947 shares of preferred stock, without par value.
- (2) Holders of 397,455 shares of common stock, without par value.

(b) Union Rock Company

- (1) Holders of \$1,979,500, principal amount of First Mortgage Serial and Sinking Fund Gold Bonds.
- (2) 160,000 shares of Class "A" capital stock.
- (3) 400,000 shares of Class "B" capital stock.

(c) Consumers Rock & Gravel Company, Inc.

(1) Holders of \$1,200,500, principal amount of First Mortgage Sinking Fund Gold Bonds.

(2) Holders of 120,328 shares of common capital stock.

(B) Finding that the Plan of Reorganization is fair and equitable and does not discriminate unfairly in favor of any creditors and stockholders and is feasible and complies with the various provisions of said Section 77B.

(C) If, at the time of the hearing on confirmation the Plan has not been accepted by or on behalf of common stockholders of Consolidated Rock Products Co. holding a majority of said common stock, that the Court find either:

(1) That the Plan provides, in respect to such holders of common stock, adequate protection for the realization by them of the value of their equity, if any, in the property of the debtor and subsidiaries dealt with by the Plan, or

(2) That the debtor, Consolidated Rock Products Co. is insolvent with respect to the common capital stock, and that the holders of such common capital stock have no equity in the property of the debtor or the subsidiaries dealt with by the Plan.

(D) Confirming the said Plan of Reorganization.

(E) Granting such other and further relief as to the Court may seem just and equitable.

Dated at Los Angeles, California, September 28, 1937.

(CORPORATE SEAL)

CONSOLIDATED ROCK PRODUCTS CO.

By Robt Mitchell
Its Vice President.

And J. R. Alder
Its Assistant Secretary.

Debtor.

LATHAM, WATKINS & BOUCHARD,

By Paul R. Watkins

Attorneys for Consolidated Rock Products Co.

UNION ROCK COMPANY BONDHOLD-
ERS' PROTECTIVE COMMITTEE

By F. B. Badgley
(F. B. Badgley)

By R. E. Frith
(R. E. Frith)

T. Fenton Knight
(T. Fenton Knight)

Walter S. Taylor
(Walter S. Taylor)

Union Committee.

O'MELVENY, TULLER & MYERS,

And Graham L. Sterling, Jr.

Attorneys for Union Rock Company Bond-
holders' Protective Committee.

CONSUMERS ROCK & GRAVEL COM-
PANY, INC., BONDHOLDERS' PRO-
TECTIVE COMMITTEE

By F. J. Gay

(F. J. Gay)

Guy Witter

(Guy Witter)

Alfred Ginoux

(Alfred Ginoux)

Being a majority of the members of said
Consumers Committee.

PETITIONERS.

GIBSON DUNN & CRUTCHER,

By T. H. Joyce

Attorneys for Consumers Rock & Gravel Com-
pany, Inc., Bondholders' Protective Com-
mittee.

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

ROBT. MITCHELL, being duly sworn, deposes and says that CONSOLIDATED ROCK PRODUCTS CO., one of the petitioners in the foregoing petition, is a corporation and that affiant is an officer thereof, to wit, a vice president, and makes this verification for and on behalf of said corporation; that affiant has read said petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters he believes it to be true.

Robt Mitchell

Subscribed and sworn to before me this 30th day of September, 1937.

[Seal]

Isobel V. Hughes

Notary Public in and for said County and State.

STATE OF CALIFORNIA)

) SS.

COUNTY OF LOS ANGELES)

T. FENTON KNIGHT, being duly sworn, deposes and says that he is a member of UNION ROCK COMPANY BONDHOLDERS' PROTECTIVE COMMITTEE, one of the petitioners in the foregoing petition, and makes this verification for and on behalf of said Bondholders' Committee; that affiant has read said petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters he believes it to be true.

T. Fenton Knight

Subscribed and sworn to before me this 30th day of September, 1937.

[Seal]

Helen La Voy

Notary Public in and for said County and State

My Commission Expires November 20, 1940

STATE OF CALIFORNIA)
) SS.
 COUNTY OF LOS ANGELES)

GUY WITTER, being duly sworn, deposes and says that he is a member of CONSUMERS ROCK & GRAVEL COMPANY, INC., BONDHOLDERS' PROTECTIVE COMMITTEE, one of the petitioners in the foregoing petition, and makes this verification for and on behalf of said Bondholders' Committee; that affiant has read said petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters he believes it to be true.

Guy Witter

Subscribed and sworn to before me this 29 day of September, 1937.

[Seal]

John S. Thomson

Notary Public in and for said County and State.

My Commission Expires May 10, 1939

[Endorsed]: Filed R. S. Zimmerman, Clerk, at 3 min.
 past 2 o'clock Oct. 1, 1937 P. M. By M. R. Winchell,
 Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

Supplemental Objections of E. Blois duBois to Plan of Reorganization submitted by Consolidated Rock Products Company, Union Rock Company Bondholders' Committee, and Consumers Rock & Gravel Company, Inc., Bondholders' Committee, dated March 15, 1937, and filed herein April 28, 1937.

To the Honorable Judges of the United States District Court, for the Southern District of California, Central Division:

Comes now E. BLOIS duBOIS, who has heretofore filed herein his written Objections to the Plan of Reorganization filed April 28, 1937, and by way of supplement to said Objections now on file, makes the further objections to confirmation of said Plan, as follows:

I.

That confirmation of said plan as presented will deprive objector of his property without due process of law, contrary to the Fifth Amendment of the Constitution of the United States, and Objector hereby invokes in opposition to said plan and its confirmation by said court, the Constitution of the United States and particularly the Fifth Amendment thereof.

II.

That Section 77 B of the Bankruptcy Act, as amended, is in contravention of the Fifth Amendment of the Constitution of the United States, in that it deprives a per-

son, in this case objector, of property without due process of law.

Respectfully submitted,

MOTT, VALLEE AND GRANT,

John G. Mott

Paul Vallee

Kenneth E. Grant

Attorneys for E. Blois duBois.

Received copy of the within Supplemental Objections of E. Blois duBois to Plan of Reorganization submitted by Consolidated Rock Products Company, Union Rock Company Bondholders' Committee, and Consumers Rock & Gravel Company, Inc. Bondholders' Committee, dated March 15, 1937, and filed herein April 28, 1937,—this 21st day of October, 1937.

O'MELVENY, TULLER & MYERS,

By Milton A. Taylor

Attorneys for Union Rock Company Bondholders Protective Committee.

LATHAM, WATKINS & BOUCHARD,

By Paul R. Watkins

Attorneys for Consolidated Rock Products Co.

GIBSON, DUNN & CRUTCHER,

By T. H. Joyce

Attorneys for Consumers Rock & Gravel Co., Inc. Bondholders' Protective Committee.

David R. Faries by WRH

(David Faries)

Attorney for The Miller Committee of Stockholders of Consolidated Rock Products Company

ALFRED E ROGERS

(Alfred E. Rogers)

Attorney for T. C. Rogers

STATE OF CALIFORNIA)

) ss.

County of Los Angeles)

KENNETH E. GRANT being by me first duly sworn, deposes and says: that he is one of the attorneys for E. Blois duBois, Objector in the above entitled action; that he has read the foregoing Supplemental Objections of E. Blois duBois to Plan of Reorganization, etc. and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

That said E. Blois duBois is now absent from the State of California and for said reason affiant makes this verification for and in his behalf.

✓ Kenneth E. Grant

Subscribed and sworn to before me this 21st day of October, 1937

[Seal]

Katherine Spengler

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 36 min past 4 o'clock, Oct. 21, 1937 P. M. By M. R. Winchell Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

FINDINGS AND REPORT OF SPECIAL MASTER.

On the 2nd day of November, 1937, Honorable Harry A. Hollzer, United States District Judge, sitting at Los Angeles, California, designated and appointed Frank P. Doherty as Special Master to hear the plan of reorganization of Consolidated Rock Products Company, Union Rock Company and Consumers Rock & Gravel Company, Inc., dated March 15, 1937, and all matters in connection therewith, including any and all objections to said plan of reorganization other than as to its constitutionality, and report promptly upon all matters brought before the Special Master pursuant to the order of his appointment, and to include in the Special Master's report a form of order to be made and entered on such report and directing the Special Master with respect to the filing of said report and giving notice thereof.

Thereafter said Frank P. Doherty qualified as Special Master.

On the 8th day of November, 1937, pursuant to notice to all interested parties, said plan of reorganization came on for hearing. The following persons were present: Mr. Graham L. Sterling, Jr., and Mr. Paul Fussell, of the law firm of O'Melveny, Tuller & Myers, representing the Union Rock Company Bondholders' Protective Committee; Mr. Thomas H. Joyce and Mr. H. F. Prince, of the law firm of Gibson, Dunn & Crutcher, representing the Consumers Rock & Gravel Company, Inc., Bondholders' Protective Committee; Mr. Paul R. Watkins, of the law firm of Latham, Watkins & Bouchard, representing the Debtors; Mr. Stanley Arndt, representing a committee of preferred stockholders of Consolidated Rock

Products Co., the Debtor; Mr. Kenneth Grant, of the firm of Mott, Vallee & Grant, representing E. Blois duBois, a holder of bonds of both the Union and Consumers companies and an objector to the plan; Mr. E. S. Williams, appearing in propria persona as the owner of \$7,000 principal amount of Union Rock Company bonds; Mr. Alfred E. Rogers, representing Mr. Thomas C. Rogers, a Union Rock Company bondholder; and several members and representatives of the aforesaid bondholders' protective committees, and other individual bondholders and stockholders. Said hearing took place and was conducted before the Special Master in the Title Insurance Building, 433 South Spring Street, Los Angeles. Said hearing proceeded from November 8, 1937, and was heard on the following dates: November 9, 10, 12, 15, 16, and 17, 1937. At the conclusion of said hearing, counsel for the respective parties filed memoranda of points and authorities, and the matter then was submitted to the Special Master for report and recommendations.

Pursuant to the order appointing the Special Master, no constitutional question was to be considered or passed upon by the Special Master as a part of said hearing or to be included in the Findings and Report. Likewise during the hearing the Special Master declined to pass upon the following matters: (a) the amount of compensation to be paid to the respective attorneys for services rendered or to be rendered in and about said reorganizations, and other matters connected or associated with it; (b) the compensation to be paid to the secretary or the members of the respective bondholders' and stockholders' protective committees. The Special Master announced that in his opinion passing on these matters would involve services rendered subsequent as well as prior to the date of the

hearing and that they were matters peculiarly within the province of the United States District Court and should not be made a part of the Findings or Report of the Special Master.

It was stipulated by all parties that the Special Master should have access to and take into consideration, in making Findings and Report, the complete files and records in this case.

The firm of court reporters employed by the Federal Government under contract reported the proceedings before the Special Master.

Both oral and documentary evidence was introduced and considered by the Special Master. The documentary evidence consisted of exhibits introduced and admitted into evidence before the Special Master in addition to the files and records of said case above referred to. The following witnesses testified in person: Mr. R. L. Rasmussen from the Trust Department of Bank of America National Trust and Savings Association; Mr. E. H. Booth, Jr., of the Trust Department of Title Insurance and Trust Company; Mr. Carl P. Smith of Citizens National Trust & Savings Bank of Los Angeles; Mr. T. Fenton Knight, secretary of the Union Rock Company Bondholders' Protective Committee; Mr. Guy Witter, Chairman of the Consumers Bondholders' Committee; Mr. Graham L. Sterling, Jr.; Mr. Robert Mitchell, Vice President of Debtor; Mr. Thomas C. Rogers; Mr. Henry C. Chase; Mr. Louis Van Gelder; and Mr. Frank Gautier.

After the submission of said matter, the Special Master herewith submits Findings of Fact and Report to the Honorable Harry A. Hollzer, United States District Judge of the above entitled court.

FINDINGS OF FACT AND REPORT

PRELIMINARY HISTORY OF CORPORATIONS INVOLVED IN AND CONNECTED WITH PLAN OF REORGANIZATION.

In the year 1929 and prior thereto there existed in Southern California, with their principal properties located in and about the County of Los Angeles, several companies engaged in the business of mining, processing, shipping and selling rock, sand and gravel. The companies doing the major portion of this type of business were Union Rock Company, a Delaware corporation, Consumers Rock & Gravel Company, Inc., a Delaware corporation, and Reliance Rock Company, a Delaware corporation. For purposes of brevity, Union Rock Company will hereinafter be referred to as the Union Company, Consumers Rock & Gravel Company, Inc., will hereinafter be referred to as the Consumers Company, and Reliance Rock Company will be hereinafter referred to as the Reliance Company. There were other minor companies in which one or the other of the above three companies had an interest, but the three companies mentioned were the principals in the consolidation hereinafter referred to in more detail. It should be noted that the term "consolidation" as used in this Report does not mean a statutory consolidation resulting in the termination of the respective corporate entities of the constituent corporations, but rather a business or operating consolidation having for its purpose the joint operation and ownership of the properties through ownership of the capital stocks of the various corporations. As a part of the consolidation, the Reliance Company became a subsidiary of the Union Company through the ownership of all of the stock of the Reliance Company by the Union Company. Mr.

George Rogers, now deceased, who had substantial financial interests in the rock business and had long experience in this particular industry, appears to have originally planned the consolidation of the Union, Consumers and Reliance companies. In order to accomplish and carry through the plan, it was necessary to have what in effect were two distinct consolidations, the first of which involved the Union and Reliance companies. This was brought about by the stockholders of the Reliance and the Union companies depositing their stock in escrow. The Union Company amended its articles and provided for the reclassification and increase of the number of shares of its capital stock, and this capital stock as increased and reclassified was issued to five voting trustees under a voting trust agreement. The trustees then issued voting trust certificates to the stockholders of the Reliance and Union companies in the proportions which had been previously agreed upon. The capital stock of the Reliance Company was transferred to the Union Company, which made the Reliance Company a wholly owned subsidiary of the Union Company and thus completed the first of the two consolidations, namely, the Union Company became the owner of all the stock of Reliance Company and the stock of the Union Company was held by voting trustees, who in turn had issued their voting trust certificates in agreed proportions to the former stockholders of the two companies. Compliance was had with the Corporate Securities Act of the State of California, and a permit was issued in the early part of 1929 authorizing the issuance of the voting trust certificates. Although the Reliance Company was wholly owned by Union, it still retained its corporate entity. At the time the consolidation of the Union and Reliance companies was taking place, negotiations were being conducted for a consolida-

tion of the Union Company and the Consumers Company. To bring about this consolidation, Consolidated Rock Products Company, the Debtor, was organized under the laws of the State of Delaware on January 28, 1929. The consolidation plan contemplated that the Debtor, hereinafter referred to as Consolidated, was to operate the properties of the Union Company, its subsidiaries, Consumers Company, its subsidiaries, and the Reliance Company. The Consolidated as a part of the plan of consolidation acquired all of the outstanding capital stock of the Union and Consumers companies. Prior to the consolidation, both the Union and the Consumers companies had outstanding bond issues secured by trust indentures upon their respective properties, said trust indentures being exhibits introduced at the hearing before the Special Master. The bonds of the Union and Consumers companies were not affected by the change of ownership inasmuch as they continued as first mortgages and liens on the properties of their respective issuing companies. The mechanics of bringing about the final step of the consolidation, that is, the organization of Consolidated and the ownership by Consolidated of the stock of the Union Company and the Consumers Company, were substantially as follows: Local bond and investment houses obtained options on the stock or voting trust certificates of the Union Company and likewise of the Consumers Company. These securities were then transferred to Consolidated, in return for which Consolidated issued its capital stock to the bond and investment houses or their nominees as named in the application to the Corporation Commissioner. The stock of Consolidated, so issued to the bond and investment houses, was disposed of in the usual course of business of said investment houses, that is, by delivering some of said stock to the stockholders

of the Union Company and Consumers Company, and by sale of said stock also to the public. At the time of the consolidation, the Union Company and the Consumers Company, and their respective subsidiaries, did over seventy-five per cent of the rock, sand and gravel business in Southern California. The Union Company and the Consumers Company had been engaged in the rock, gravel and sand business for several years prior to the consolidation, and owned or leased rock, gravel and sand deposits at strategic points from Santa Barbara County on the north to San Diego County on the south, and as far east as San Bernardino. The products of said companies, that is, crushed rock, washed and screened gravel, and sand, were used in the construction and maintenance of railroads, highways, streets, buildings, irrigation, flood control, and reclamation projects. They were basic commodities used in all structural and concrete works. At the time of the consolidation, that is, in the early part of 1929, great industrial and other activity requiring the use of the products of the companies existed. In addition to the rock, gravel and sand deposits, which at that time consisted of approximately twenty-three producing plants, the constituent companies also owned, operated or leased various distributing bunker plants strategically located. In excess of 2,000 acres of deposits were owned in fee by these companies, and nearly 3,000 acres were held under lease. Prior to the consolidation, all three companies, namely, Union Company, Consumers Company, and Reliance Company, were in competition and supplying the same general trade area, the major market being located in and around the City of Los Angeles. The companies owned in excess of 200 motor trucks adapted to the use of this type of business. The consolidation brought under one control what appeared to be all factors

necessary to bring about economy of operation and production and the elimination of duplicated facilities in all departments, particularly production, transportation and sales. It likewise had the advantage of allocating territory to various of the operating plants, which would have the effect of eliminating duplicated trucking. Under the consolidation, estimated earnings, after paying bond interest, all taxes and preferred dividends, would leave in excess of half a million dollars in annual profits. An appraisal of the properties of the Union Company, Consumers Company and Reliance Company had been made by J. G. White Engineering Corporation of New York in the spring of 1928. The appraisers fixed the value of the properties at approximately \$15,000,000. Subsequent to the appraisals, other properties were purchased by the Union, Consumers and Reliance companies which had an appraised value of approximately \$1,500,000. Thus the consolidation brought under one control properties of an appraised value in excess of \$16,000,000. As of the date of the consolidation there was approximately \$4,000,000 represented by outstanding bonds of Union and Consumers, respectively. The consolidation appears to have been very carefully planned and to have had every indication of being a successful enterprise.

The consolidation contemplated Consolidated's issuing approximately 300,000 shares of preferred stock without par value, carrying liquidation preference of \$25 per share and a dividend rate of \$1.75 per share, and issuing approximately 400,000 shares of common stock without par value. Approximately the above number of shares of preferred and common stock, respectively, were issued. The major portion of the stock appears to have been sold in units of two shares of preferred and one share of common, for \$58 per unit.

At the completion of the consolidation and to carry out the intent and purpose of those who initiated and carried through the consolidation, an agreement was entered into between Consolidated and its three principal, wholly-owned subsidiaries, Union, Consumers and Reliance, termed an Operating Agreement, dated July 15, 1929, but effective as of April 1, 1929. A true copy of the operating agreement of July 15, 1929, is annexed to these Findings and Report and made a part hereof. At the time of the execution of said agreement, Consolidated owned all of the stock of the Union Company; which in turn owned the stock of the Reliance Company. Consolidated likewise owned all the stock of the Consumers Company. Consolidated and the Union, Consumers and Reliance companies all maintained separate corporate entities. However, the directors of Consolidated selected and chose the directors of its subsidiaries, namely, Union Company, Consumers Company and Reliance Company. The operating agreement was therefore a contract negotiated between and executed by the officers of Consolidated on behalf of Consolidated and also acting on behalf of the Union Company, the Consumers Company and the Reliance Company, all of which were, directly or secondarily, wholly owned subsidiaries of Consolidated.

The operating agreement of July 15, 1929, contained this express provision:

"It is distinctly understood and agreed that this agreement is entered into for the mutual benefit of the parties hereto, that it is not made expressly or at all for the benefit of any third person as that term is used in Sec-

tion 1559 of the Civil Code of the State of California, and that said parties hereto and their respective successors and assigns alone shall exercise and enjoy the rights and privileges hereof."

Under the terms of the operating agreement, the Union Company, Consumers Company and Reliance Company ceased all operating functions, and the entire management and operation and financing of the business and properties of the consolidated companies were made obligatory upon Consolidated. As of the date of the consolidation, the Union Company had outstanding bonds secured by its properties in the principal amount of approximately \$2,400,000 par value, and the Consumers Company had outstanding bonds secured by its properties in the principal amount of approximately \$1,500,000 par value. The operating agreement further provided that the cash, securities, notes, and bills and accounts receivable, book accounts, manufactured materials and materials in process, as well as contracts for the sale of materials of both Union and Consumers companies, should be transferred to Consolidated. The same was true with respect to the cash, securities, notes, and bills and accounts receivable, book accounts, manufactured materials and materials in process and raw materials and contracts for the sale of materials of the Reliance Company. As of March 31, 1929, the balance sheet of the Union Company shows assets consisting of nearly \$10,000,000, and liabilities of approximately \$2,600,000. Reference is made to Special Master's Exhibit No. 14 for details of assets and liabilities of the Union Company. The properties of the Union Company in this exhibit, exclusive of current assets of cash and accounts receivable, were given a value in excess of \$6,500,000 after allowances had been made

for depreciation, depletion and amortization of leaseholds. The current assets consisted of over \$300,000 in cash and in excess of \$300,000 in accounts receivable. The Consumers Company, as shown by the balance sheet of March 31, 1929, had total assets of approximately \$6,000,000, with total liabilities of approximately \$2,000,000. The properties of the Consumers Company were carried on this balance sheet, after reserves for depreciation and depletion had been made, at a valuation of approximately \$5,000,000. In addition the current assets consisted of approximately \$80,000 in cash and customers' accounts, accounts and notes receivable aggregating approximately \$450,000. Reference is made to Special Master's Exhibit No. 15 for further details. The balance sheet of the Reliance Company as of March 31, 1929, showed substantial assets, but much less than that of either the Union Company or Consumers Company. The operating properties of Reliance Company, consisting of land and plant equipment, were valued in the balance sheet at approximately \$1,500,000, with current assets of approximately \$84,000 and current liabilities of approximately \$225,000. The valuations of the properties set forth in the balance sheets of the Union, Consumers and Reliance companies were approximately those fixed by J. G. White Engineering Corporation.

The Consolidated Rock Products Co. in its first balance sheet as of May 31, 1929, which reflected its assets and liabilities as of the date of the consolidation, is shown in detail in Special Master's Exhibit No. 20. The Consolidated balance sheet of May 31, 1929, shows an item of \$400,000 due on capital stock subscriptions. The testimony showed that Consolidated likewise had purchased rolling stock consisting of automobiles and trucks, and

acquired other properties in addition to that taken over in the consolidation.

Although the Union, Consumers and Reliance companies and their respective subsidiaries maintained their separate corporate entities and Consolidated was to act as the operating agency for these subsidiaries, to all intents and purposes as shown by the Consolidated balance sheet of May 31, 1929, Special Master's Exhibit No. 20, the properties of these subsidiaries (Union, Consumers, Reliance) were carried upon the books of Consolidated as assets of Consolidated, and the liabilities of these subsidiaries were carried as liabilities of Consolidated. This included the bonded debt of both the Union and Consumers companies, which as of May 31, 1929, amounted to \$3,880,000.

The evidence established that subsequent to the consolidation, the separate corporate entities of the subsidiaries of Consolidated, namely, Union and its subsidiaries, Consumers and its subsidiaries, and Reliance, were treated as separate corporate entities in name only and Consolidated assumed all of the functions not only of an operating company but also those of company ownership. The depreciation and depletion and amortization items set forth in the above referred to balance sheets of the Union, Consumers, Reliance and Consolidated companies were on the basis of the valuations given the assets of the respective properties at the time of the consolidation.

The operating agreement of July 15, 1929, was modified by an agreement dated February 16, 1933. A true copy of said agreement of February 16, 1933, is annexed to and made a part of these Findings and Report. The agreement of February 16, 1933, modifying the agreement of July 15, 1929, is typical of the finding that Con-

solidated assumed every function of management and ownership of all the properties of itself and its subsidiaries. This agreement, although purporting to be made between Reliance, Consumers, Union and Consolidated, was executed by Mr. Twaits, as President, and Mr. Mitchell, as Secretary, of Consolidated and acting in identically the same capacity for the Union Company, the Consumers Company and the Reliance Companies. The agreement of February 16, 1933, modifying the operating agreement of July 15, 1929, materially changed the depreciation item to be credited by Consolidated to the Union, Consumers and Reliance companies as contemplated and provided for in the original agreement of July 15, 1929. Both of the agreements, namely, the original operating agreement of July 15, 1929, and its modification as of February 16, 1933, were in fact agreements between these companies acting through the same directors and officers, or their immediate agents or employees. It was undoubtedly the intent of the officers and directors of Consolidated, who acted for Consolidated and likewise for all of the wholly owned subsidiaries, to work out some feasible and practical plan to do away with the inconvenience of duplicated and overlapping ownership and operations and to bring about more efficient and economical management, and at the same time to preserve the subsidiaries of Consolidated, namely, Union, Consumers and Reliance companies, as independent corporate entities for purposes of accounting and income tax and so as not to violate or breach any of the provisions of the trust indentures securing the bond issues of the Union and Consumers companies.

At the time of the consolidation in 1929, the Union Company and its subsidiaries, including the Reliance Company, made the largest contribution in the form of

acreage of properties owned in fee and in bunker sites. The Consumers Company made a substantial contribution: in fee acreage less than one-half of that of the Union Company, but in leasehold acreage approximately twice that of the Union Company. Under the plan of operation and by reason of subsequent developments, it was contemplated and made necessary that the most efficient plants of the subsidiaries be operated and others be shut down. Following the consolidation, the operation of Consolidated was exposed to the worst financial and business depression in our history. Building activity was at a standstill. The price levels and sales were such as to render the operation of the properties at a reasonable profit impossible. Following the consolidation, competing companies entered the field, with the result that from transacting approximately seventy-five per cent of the total business in this territory, the consolidated companies gradually were able to do little more than one-third of the total tonnage in the Los Angeles market. So disastrous was the depreciation to the business of Consolidated that a revaluation of all the physical properties of Consolidated and its subsidiaries (Union, Consumers and Reliance) as of May 1, 1931, referred to as the Jeffries-Wittenberg Appraisal, fixed their value as of the date of May 1, 1931, at approximately \$4,414,425. These were substantially the same properties which two years prior to that date were set up on the books of Consolidated at a valuation in excess of \$16,000,000. Reference is made to Special Master's Exhibit No. 29 for the details of this re-appraisal and valuation, Mr. W. P.

Jeffries and Mr. Wittenberg were connected with Consolidated, being at said time a member of its board of directors and an employee, respectively. It is impossible to determine at this time whether the original valuations of in excess of \$16,000,000 were inflated values beyond and above their reasonable value, or the Jeffries-Wittenberg appraisal was excessively deflated. The evidence would indicate that the original valuation of \$16,000,000 was fixed upon the expectation that the prosperity that existed in 1929 and previous years was to continue unabated. Developments since 1931 indicate that the total valuations fixed by Mr. Jeffries and Mr. Wittenberg in 1931 are the more reasonable and accurate. There is no evidence to show or reason to believe that any advantage would be gained by Consolidated or its subsidiaries by having the valuations of the properties as of May 1, 1931, fixed at a level lower than the properties were actually worth. There was no testimony indicating that either Mr. Jeffries, now deceased, or Mr. Wittenberg had any personal motive in doing other than arriving at a reasonable valuation of the properties of Consolidated and the subsidiaries.

The valuations of physical properties as fixed by the Jeffries-Wittenberg appraisal still showed a sufficient value to take care of the bondholders of the Union Company and the Consumers Company, but the book value of the investment by the stockholders of Consolidated, which the evidence showed was originally in excess of \$7,000,000, was almost wiped out in its entirety by this latter appraisal.

TREATMENT OF BONDHOLDERS OF UNION COMPANY AND CONSUMERS COMPANY SUBSEQUENT TO CONSOLIDATION.

The evidence shows the interest paid by Consolidated upon Union bonds from the date of the consolidation to the time of the default aggregated \$603,240, and the interest paid by Consolidated upon the Consumers bonds from the date of the consolidation to the date of the default aggregated \$412,305.

The evidence shows that the Consolidated retired Union bonds from the date of the consolidation to the time of the default aggregating \$443,500 par value, and that Consolidated retired Consumers bonds from the date of the consolidation to the time of the default aggregating \$299,500.

The amount of the present bonded indebtedness of the Union and Consumers companies is as follows:

Union Company bonds outstanding	\$1,979,500
Union bonds owned by Consolidated	102,500
Net Union bonds in the hands of the public	1,877,000
Consumers bonds outstanding	1,200,500
Consumers bonds owned By Consoli- dated	63,500
Net Consumers bonds in hands of the public	1,137,000

The evidence shows that although Consolidated paid in excess of \$1,000,000 in interest and retirement of Union bonds, and in excess of \$700,000 in interest and retirement of Consumers bonds, from 1929 to 1934, during that same period Consolidated showed a net loss during 1930,

1931, 1932, 1933 and 1934 in excess of \$1,500,000. This net loss was arrived at after deducting depreciation, depletion, amortization on leases and taxes, principally on the valuations of 1929. The operating profit from 1929 to 1934, before bond interest and reserves for depreciation, depletion and amortization, aggregated approximately \$3,000,000. The major portion of this operating profit was made in 1929, 1930 and 1931. In 1934 the net operating profit was but \$21,420. The evidence shows that Consolidated during the depression used all available funds to pay interest on and to retire the Union and Consumers bonds.

As of September 30, 1937, the delinquent interest on the Union bonds held by the public aggregated \$459,865, and the delinquent interest on the Consumers bonds held by the public as of September 30, 1937, aggregated \$255,825. In addition to the delinquent interest on the Union and Consumers bonds, there were also substantial serial maturities and sinking fund payments due on the Union and Consumers bonds. The first interest default on the Union bonds was March 1, 1934, and has continued to date. The first interest default on the Consumers bonds was July 1, 1934, and has continued to date. The first default on the serial maturities of the Union bonds was September 1, 1933, and has continued to date, and the first default in the sinking fund payments on the Consumers bonds was July 1, 1934, and has continued to date.

The data respecting the delinquencies in bond interest and principal payments, as well as the payments made on bond interest and principal, are contained in a communication of November 26, 1937, from Robert Mitchell, Vice President of Consolidated, and were furnished at the request of the Special Master from the books and records

of the companies, and copies of this letter were mailed to the attorneys of all interested parties. No objection as to the accuracy of this information has been raised by any of said attorneys, and the Special Master therefore has accepted the data supplied by Mr. Mitchell as correct. Further data are contained in the letter of Mr. Mitchell of November 26, 1937, and a true copy of said communication is annexed to this Report and made a part hereof.

PLAN OF REORGANIZATION.

The Plan of Reorganization dated March 15, 1937, on file in the office of the United States Clerk of the above entitled court was arrived at in the following manner: Upon the application of Consolidated to be given the benefits of the provisions of Section 77B of the Bankruptcy Act of 1898 as amended, the representatives of the bondholders of the Union Company and the Consumers Company and the representatives of the stockholders of Consolidated formed themselves into committees, each acting independently of the other. It was the conviction of the Union bondholders that the properties of the Union Company were the more valuable and desirable. The same contention as to their respective properties was made by the representatives of the Consumers bondholders and the representatives of the Consolidated stockholders. Each group believed that it had made the largest contribution to the assets and business of the consolidated companies and therefore was entitled to the most favorable treatment in the payment of the indebtedness represented by the bonds of the Union and Consumers companies and the stock of Consolidated. During the operations from 1929 to 1934 by Consolidated, the directors of Consolidated had deemed it expedient to center their major activities in the working and operation of the properties of the Con-

sumers Company, with the result that during the past several years the largest tonnage of production, and consequently the major portion of the total gross income, has been produced from the Consumers Company plants. In the event of a segregation of the properties, it would have been to the advantage of the Consumers Company bondholders to have the properties of the Consumers Company segregated from those of the Union Company, Reliance Company and Consolidated, because of the above facts. The Union Company still held the largest acreage in fee simple ownership, as well as the larger number of bunkers. Consumers owned the smaller acreage in fee but the larger leasehold acreage. The respective committees representing the Union bondholders and the Consumers bondholders, and the Consolidated stockholders, were in every respect adverse and in many respects antagonistic in their respective interests. The evidence shows that it would be to the injury of all interested parties, including the bondholders and stockholders, if any attempt were made to segregate the properties and place them back in their original ownership, i. e., if the Union Company properties were to be returned to the Union Company, the Consumers Company properties to be returned to the Consumers Company, and the properties acquired by Consolidated to be segregated and retained by it. The evidence shows that there had been commingling of the various properties and assets, including rolling stock and other necessary equipment, during the period from 1929 to date. The operating revenue from the operations of the properties by Consolidated has been used upon all properties irrespective of the source from which it was produced. The funds secured by Consolidated from the sale of its stock and revenue acquired by Consolidated from operations of properties that Consolidated had acquired

subsequent to the consolidation have been used to further the business as a whole. All of these factors have made it practically impossible to effect a fair and equitable segregation of the properties. Added to this is the fact that the properties have for the past eight years been operated as if they were of one ownership. A going-business value and goodwill, resulting from such ownership and joint operation has been created. From the foregoing I must conclude that it would be highly injurious and destructive of the best interests of the bondholders and stockholders of the various companies to attempt to do other than agree upon a plan of reorganization of Consolidated giving full recognition, so far as the values of the properties are concerned, to the respective interests of the bondholders and stockholders. All parties without exception at the hearing agreed that they were opposed to foreclosure and liquidation. All parties, except the objectors, were of the conviction that the plan of reorganization was the most fair, equitable and feasible to all interests that could be arrived at. All parties represented at the hearing, including the objectors (except Mr. Rogers), were convinced that a plan of reorganization which contemplated the continuance of the operation of all of the properties as one unit under one management and ownership offered the greatest assurance to the bondholders of the Union Company and the Consumers Company that they would be paid an amount approximating the par value of their bonds. Of similar opinion were the representatives of Consolidated and its stockholders, viz., that a plan of reorganization that contemplated the operation of the properties under one ownership and as one unit would undoubtedly insure the preservation for the stockholders of the equity remaining after the bondholders had been paid as provided in the plan of reorganization.

SUBSEQUENT BETTERMENTS AND ADDITIONS
TO EQUIPMENT OF UNION COMPANY AND
CONSUMERS COMPANY.

The Trust Indentures of the Union Company and the Consumers Company, Special Master's Exhibits 12 and 13, provide in substance that all renewals, replacements, and substitutions, made subsequent to the date of the Trust Indenture, of any equipment, fixtures, machinery, automobiles, trucks, road vehicles, steam shovels, implements, and appliances shall be subject to the lien of the Trust Indenture. The evidence shows that substantial sums were expended by Consolidated in the repair and maintenance of the properties of the Union Company, Consumers Company, and Reliance Company, and also that the trucks and automobiles and portions of the other equipment of the three above mentioned subsidiaries became unserviceable and worn out in the usual course of the operations in the carrying on of the business by Consolidated, and that equipment was purchased by Consolidated out of the funds and moneys of Consolidated to replace said worn out and unserviceable equipment and to purchase new and additional trucks and equipment and appliances. The evidence further shows that in some instances the trucks and automobiles which were worn out and unserviceable were turned in or delivered as a part payment on account of the new trucks and other equipment acquired by Consolidated; that such new and renewed equipment so purchased by Consolidated was necessary, proper, and essential to the carrying on of the busi-

ness of Consolidated and its subsidiaries; that the funds with which said new and additional equipment was purchased and paid for were supplied by Consolidated from the usual operating revenues of the properties of the Union Company, Consumers Company, and Reliance Company, and also from the properties of Consolidated, and also from proceeds received by Consolidated from the sale of its stock to the public. The evidence further shows that there was such commingling of said funds last hereinabove referred to as to make it impracticable, from an accounting or other standpoint, to determine the amount of money from either or all of the respective sources which was used to replace, renew, or purchase additional trucks, automobiles, and other appliances and equipment used by Consolidated in and about the business. It is therefore found that, assuming that the lien of the Trust Indentures of the Union Company and the Consumers Company pursued and attached to such new, renewed, and additional equipment so as to subject said trucks, automobiles, appliances, and other equipment to the lien of said Trust Indenture and as security for the bonds issued thereunder, it is both impracticable and, from an accounting standpoint, impossible to determine to what extent the equipment now owned and operated by Consolidated is a renewal, replacement, or substitution of such automobiles, trucks, appliances, and other equipment of the Union Company, the Consumers Company, and the Reliance Company, or is new equipment purchased by Consolidated for and on its own account from the proceeds resulting from the operation of the properties by Consolidated or from the funds received from the sale of Consolidated stock, and therefore not subject to the lien of said Trust Indentures, Special Master's Exhibits 12 and 13.

VALUE OF PROPERTIES

Testimony directed to the value of the properties of the Union Company, Consumers Company, Reliance Company, and Consolidated was given by Mr. Thomas C. Rogers, Mr. Robert Mitchell, Vice President of Consolidated, and Mr. Frank Gautier. Mr. Rogers is a man of long and wide experience in the rock, gravel, and sand business. Mr. Mitchell and Mr. Gautier likewise have had wide experience, covering a period of approximately fifteen years. Mr. Mitchell and Mr. Gautier were formerly with the subsidiaries (Union, Consumers, and Reliance Companies) prior to the merger in 1929. All three witnesses were thoroughly acquainted with the properties owned by all of the companies. While they differed as to the valuations in some details, on the whole the testimony of each of the witnesses showed that the value of the properties of the Union Company, Consumers Company, and Reliance Company was approximately \$3,300,000.00, and that, according to Mr. Mitchell's testimony, and including \$500,000.00 for good will and going business value, the total value of the properties of Consolidated would be approximately \$1,000,000.00, making a total valuation for the properties of Consolidated, Union, Consumers, and Reliance in excess of \$4,000,000.00. Mr. Rogers was of the opinion that the value of the Union properties would be \$7,000,000.00 if Union were operated as an independent unit. This valuation, however, was based upon the earnings that Mr. Rogers was convinced the Union properties would make in the event said properties were segregated and operated as an independent unit. The evidence does not warrant a finding of this valuation. The evidence further shows that the success of this type of business depends not only upon tonnage sold, but also

upon prices received. The evidence further shows that there have been repeated price wars in the industry, and there *there* is no assurance of stability in market conditions. The following computations from the books and records of Consolidated clearly demonstrate this fact. In the first column is the year of the operation, in the second column tons of rock, gravel, and sand that were sold, and in the third column the operating profit before bond interest and reserves for depreciation, depletion, and amortization:

1. Year	2. Tonnage Sold	3. Operating Profit
1929	4,770,839.76	\$1,009,504.55
1930	4,049,672.91	649,778.19
1931	2,822,785.80	1,026,027.02
1932	2,480,799.55	73,848.70
1933	1,974,109.22	230,309.33
1934	874,334.99	21,420.90
1935	1,111,617.34	49,092.51
1936	2,300,258.97	201,632.29
1937 (first 9 mos.)	2,031,290.37	199,890.82
	<hr/> 22,415,709.61	<hr/> \$3,461,504.31

A comparison of the years of 1930 and 1931 and again of the years of 1936 and 1937 demonstrates the extent to which prices for the product affect the earnings of the business. In 1930 there were sold in excess of 4,000,000 tons and the operating profit was \$649,000.00. In 1931 there were sold 2,822,000 tons and the operating profit was \$1,026,000.00. This demonstrated that with a decrease in tonnage of 1,200,000 tons, there was an increase in operating profit of nearly \$400,000.00. In 1936 the tonnage was 2,300,000 tons and the operating profit

for the entire year was \$201,000.00, while in 1937 for the nine months the tonnage was 2,031,000 tons, approximately 300,000 tons less than the preceding year, while the operating profit for this nine months' period was approximately the same as for the entire year of 1936.

The evidence shows that the assets of the Union Company, Consumers Company, Reliance Company, and Consolidated are entirely insufficient and inadequate to pay the face value of the bonds, plus all accrued interest and the liquidation preferences, plus accrued dividends upon the preferred stock of Consolidated. The evidence further shows that the value of the assets, admittedly subject to the Trust Indentures of the Union Company and the Consumers Company, is insufficient to pay the par value of the bonds, plus accrued interest secured by said Trust Indenture, and it is to the interest and advantage of the bondholders that the properties of the Union Company, Consumers Company, Reliance Company, together with the properties of Consolidated, be operated and owned as one unit, and that by being so operated and owned the said bondholders would receive a larger yield and return both in principal and interest upon their bonds than would be the case in the event of a foreclosure or bankruptcy or other liquidation, or a segregation of the properties so as to return them again to their owners and have them operated as separate, independent, and competing units. The evidence does show, however, that the fair present going-concern value of all of the properties, if operated as a unit, is in excess of the total bonded indebtedness, plus accrued and unpaid interest thereon up to April 1, 1937, the latter being the date of the new bonds to be issued under the plan of reorganization.

PLAN IS FAIR AND HAS BEEN APPROVED BY
REQUIRED PERCENTAGE OF BONDHOLD-
ERS AND STOCKHOLDERS.

The plan of reorganization has taken into consideration all of the foregoing facts and other matters. The plan represents a fair compromise between the various conflicting interests, that is, the interest of the Union bondholders, the Consumers bondholders, and the stockholders, both common and preferred, of Consolidated, the debtor. The compromise was arrived at as the result of extensive and painstaking negotiations, including amongst all the other factors a fair and reasonable balancing of the greater book values of the Union properties against the greater yield in late years from the Consumers properties. The plan, when all of the facts and factors are considered, was arrived at after an honest effort to effect an equitable and fair adjustment of the respective interests of all conflicting groups, and the evidence demonstrates and shows, and the findings are made: (a) that the plan of reorganization dated March 15, 1937, is fair and equitable, and does not discriminate unfairly in favor of any class of creditors or stockholders, and is feasible; (b) said plan complies with the provisions of subdivision (b) of Section 77B of the Bankruptcy Act; (c) said plan has been accepted as required by the provisions of subdivision (e), clause (1), of said Section 77B; (d) the provisions of subdivision (e), clause (2), of said Section 77B have been complied with to the extent applicable, and that neither the Debtor nor any of its subsidiaries are a utility, and consequently compliance with said subdivision (e) of said clause (2) is not required; (e) said plan provides that all amounts to be paid by the Debtor or by the new corporation to be organized pursuant to said plan to

acquire the Debtor's assets, and all amounts to be paid to committees or reorganization managers for services or expenses incidental to the reorganization, are to be subject to the approval of the judge; and (f) the offer of said plan and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by the Bankruptcy Act.

It is further found that the submission of the said plan to the bondholders of the Union Company and the Consumers Company and to the stockholders of Consolidated was done fairly and openly and in no way the result of any misrepresentation or other inequitable practice, and that the consent of the bondholders and stockholders was given with all of the facts freely and fairly placed before them.

The evidence shows that 77.26% of the bondholders of the Consumers Company have given their approval to the plan of reorganization. By adding the consent of the Consumers bonds owned by Consolidated, the percentage of consenting Consumers bonds would be 78.47%. The evidence shows that 67.61% of the Union bondholders have given their consent to the plan of reorganization and that if the Union bonds owned by Consolidated were included, there would have been 69.29% approving the plan of reorganization. The evidence shows that Consolidated had purchased Union bonds and Consumers bonds and owned said bonds and was authorized by the directors of Consolidated to consent to the plan of reorganization; that said ownership by Consolidated of said Union bonds and Consumers bonds qualified and entitled Consolidated to express its approval or disapproval of the plan of reorganization.

The evidence shows that the holders of 62.08% of the preferred stock of Consolidated have expressed their approval of the plan of reorganization, and that the holders of 50.10% of the common stock of Consolidated have given their approval and consent to the plan of reorganization. It is further found that said approval and consent of said bondholders and stockholders were in the manner and form required and authorized by Section 77B of the Bankruptcy Act.

The plan of reorganization gives recognition to the rights and interests of the stockholders of Consolidated. It is found that the Consolidated stockholders have substantial equities in the properties included in the plan of reorganization, and that the interests and rights granted said stockholders under the plan of reorganization are not out of proportion to the equities of said stockholders, considering their contribution to the existing properties now represented by the consolidated companies and that the plan of reorganization is fair, just and equitable with respect to the rights of said stockholders.

FINDINGS WITH RESPECT TO THE OBJECTIONS OF OBJECTOR E. BLOIS DUBOIS, HEREIN- AFTER REFERRED TO AS MR. DUBOIS.

Mr. duBois is the owner of \$150,000 par value of Union bonds and the owner of \$31,500 par value of Consumers bonds. Mr. duBois purchased all of the Consumers bonds between July 1, 1934, and April 17, 1935, and prior to the filing of any petition for reorganization of Consolidated under Section 77B of the Bankruptcy Act. Said Consumers bonds owned by Mr. duBois were pur-

chased subsequent to the default in payment of interest by the Consumers Company on said bonds. Mr. duBois purchased \$72,000 par value of Union bonds from time to time between September 20, 1934, and May 8, 1935, and prior to the filing of any petition by Consolidated under Section 77B. Said purchase of Union bonds by Mr. duBois was made, however, after there had been default in payment of interest upon Union bonds and subsequent to a default by the Union Company in meeting certain serial maturities. Mr. duBois purchased \$78,000 par value of Union bonds between June 5, 1935, and December 9, 1935, being subsequent to the filing of the petition for reorganization by Consolidated under Section 77B. Mr. duBois did not attend the hearings, it being stated by his counsel that he was ill. A stipulation (Special Master's Exhibit No. 10) was filed setting forth the facts to which Mr. duBois would testify, subject to legal objections, if he were present at said hearing. The evidence further shows that Mr. duBois paid on an average of \$210 for each bond of Consumers Company, par value \$1,000, and that he paid \$145 for each Union Company bond, par value \$1,000; that of the total of \$31,500 par value in Consumers bonds purchased by Mr. duBois, he has an actual cash investment of approximately \$6,600, and that he has actual cash investment of approximately \$21,700 in the \$150,000 par value of Union bonds.

Mr. duBois would testify, according to the stipulation, that he made the purchase of said bonds after careful inquiry and with the full belief and conviction that a building boom would soon occur in Southern California, and that said purchase was not for purposes of speculation or for the purpose of attempting to take advantage of market fluctuations.

The main and principal objection of Mr. duBois to the plan of reorganization may be summarized as follows: That the stockholders of Consolidated have no equity in or to the properties represented by the plan of reorganization, and that said stockholders should not be given any right or interest under said plan, and that the entire properties of the Union Company, Reliance Company, Consumers Company and of Consolidated, including all of the equipment, trucks, automobiles and appliances, be available for sole benefit of the bondholders of the Union Company and Consumers Company. The evidence shows that the objection of Mr. duBois is without merit or support. The other objections of Mr. duBois, as presented in his written objections and at the hearing, have been covered by other portions of these Findings and are likewise without merit or support.

INDEPENDENT APPRAISAL.

The plan of reorganization, as heretofore found, is the result of nearly two years of conscientious effort of opposing and conflicting interests. The evidence developed that there has been such a commingling of the assets and properties, including the funds from the sale of stock of Consolidated, that an appraisal of the properties would be of no value to the court and would be of such indefinite and unsatisfactory nature as to produce further confusion, and a separate, independent appraisal would result in unnecessary and great delay and expense to all parties. Its benefits would be highly problematical. There is no evidence that the plan of reorganization has dealt unfairly or inequitably with the bondholders of the Union and Consumers companies or the stockholders of Consolidated. All interests are unanimous in their conviction that none of the interests are receiving as much as they are entitled

to. The evidence shows, however, that the division of the respective interests in the plan of reorganization not only presents a feasible and workable plan, but likewise has taken into consideration all of the claims, equities and rights of the bondholders and stockholders and has arrived at a plan which gives full recognition to the rights and equities of each class.

BASIS OF REPORT.

This Report, and the findings and conclusions herein made and reached, are based upon (a) the testimony produced at the hearing before the Special Master, (b) all exhibits introduced at said hearing, and (c) all of the documents, proceedings and records filed in the above entitled cause in the office of the Clerk of the court. The Special Master will certify the reporter's transcript of said hearing before the Special Master as soon as such transcript has been prepared at the instance of objector duBois; without expense to the Debtors or their estates, and submitted to the Special Master for examination and certification.

CONCLUSION.

For the reasons herein stated, it is recommended that the Plan of Reorganization of March 15, 1937, be confirmed.

Dated: February 11th, 1938.

Frank P Doherty
(Frank P. Doherty)
Special Master.

OPERATING AGREEMENT

AGREEMENT, made and entered into in quadruplicate original this 15th day of July, 1929, by and between CONSOLIDATED ROCK PRODUCTS CO., a corporation duly organized and existing under the laws of the State of Delaware, party of the one part, hereinafter called "Operating Company", and UNION ROCK COMPANY, a corporation duly organized and existing under the laws of the State of Delaware, hereinafter called "Union Company", CONSUMERS ROCK & GRAVEL COMPANY, INC., a corporation duly organized and existing under the laws of the State of Delaware; hereinafter called "Consumers Company", and RELIANCE ROCK COMPANY, a corporation duly organized and existing under the laws of the State of Delaware, hereinafter called "Reliance Company", parties of the other part, for convenience referred to hereinafter collectively as "Owning Companies"; all of the parties hereto being duly organized to do and doing business in the State of California.

THIS INDENTURE, WITNESSETH:

Recitals

The Union Company is the owner of all of the outstanding capital stock of the Reliance Company, with the exception of qualifying shares of directors; and the Operating Company is the owner of all outstanding capital stock of the Union Company and the Consumers Company; with the exception of qualifying shares of directors.

The Union Company entered into a certain Trust Indenture dated the 1st day of September, 1927, with Title Insurance and Trust Company, a corporation duly organized and existing under the laws of the State of California,

as Trustee, to secure a bond issue in a total authorized principal amount of Five Million Dollars (\$5,000,000.00) par value, of which issue bonds in the principal amount of Two Million, Four Hundred Twenty Three Thousand Dollars (\$2,423,000.00) par value are outstanding; and the Consumers Company entered into a certain Trust Indenture dated the 1st day of July, 1928, with Bank of Italy National Trust & Savings Association, a banking association organized and existing under and by virtue of the laws of the United States of America, as trustee, to secure a bond issue in a total authorized principal amount of Two Million, Five Hundred Thousand Dollars (\$2,500,000.00) par value, of which issue bonds in the principal amount of One Million, Five Hundred Thousand Dollars (\$1,500,000.00) par value are outstanding. Each of said trust indentures are duly recorded and registered as required by law and reference to them is hereby made for detailed provisions thereof.

Under the circumstances, the maintenance by each of the Owning Companies of separate and distinct operating organizations is not consistent with efficient and economical management; and results in duplicated production, transportation and sales expense, with attendant increased costs to the purchasing public of rock and rock products. Therefore, in the public interest as well as in the interests of the parties hereto, it is proposed that the Operating Company, subject to the provisions of the Trust Indentures above referred to, maintain and operate the properties of the Owning Companies as hereinafter more particularly referred to under one operating organization. The economies thereof will result in material savings to the purchasing public of rock and rock products, will permit of reasonable returns from operation of the business, and

will result in the maintenance of competition with other rock companies operating in this territory, upon a fair and wholesome basis.

An agreement between the parties hereto has been reached as hereafter stated.

Agreement

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. Section 1. Effective Date.

The effective date of this agreement shall be the 1st day of April, 1929, and this agreement shall be deemed as having been entered into on and as of said date.

Section 2. Properties of the respective owning Companies subject hereto.

(a) Properties of the Union Company subjected to the provisions of this agreement shall be:

1. Those particularly described or referred to in and subjected to the provisions of said Trust Indenture dated the 1st day of September, 1927, (paragraphs I to IX, inclusive, pages 11. to 70, inclusive, of printed copy of said Trust Indenture), including also

2. Cash, securities, notes and bills and accounts receivable, book accounts, manufactured materials and materials in process, raw materials not in place, supplies actually on hand, and contracts for the sale of materials (all of which referred to in this subdivision (2) of Paragraph (a) of Section 2 shall be assigned and transferred, and for the purposes hereof shall be deemed to have been assigned and transferred unto the Operating

Company), but expressly excepting and excluding any contracts for the purchase of materials or supplies unless the Operating Company shall elect to accept the same by written notice unto the Union Company and the other party or parties to any such transaction.

(b) Properties of the Consumers Company subjected to the provisions of this agreement shall be:

1. Those particularly described or referred to in and subjected to the provisions of said Trust Indenture dated the 1st day of July, 1928, (pages 7 to 23, inclusive, of printed copy of said Trust Indenture), including also

2. Cash, securities, notes and bills and accounts receivable, book accounts, manufactured materials and materials in process, raw materials not in place, supplies actually on hand, and contracts for the sale of materials (all of which referred to in this subdivision (2) of Paragraph (b) of Section 2 shall be assigned and transferred, and for the purposes hereof shall be deemed to have been assigned and transferred unto the Operating Company), but expressly excepting and excluding any contracts for the purchase of materials or supplies unless the Operating Company shall elect to accept the same by written notice unto the Consumers Company and the other party or parties to any such transaction.

(c) Properties of the Reliance Company subjected to the provisions of this agreement shall be (except as in this paragraph (c) expressly excepted and excluded) all of its property real and personal and wheresoever situate. It is understood that all cash, securities, notes and bills and accounts receivable, book accounts, manufactured materials, and materials in process, raw materials not in place, supplies actually on hand, and contracts for the

sale of materials shall be assigned and transferred, and for the purposes hereof shall be deemed to have been assigned and transferred unto the Operating Company, notwithstanding anything to the contrary herein, any contracts for the purchase of materials or supplies are expressly excepted and excluded herefrom unless the Operating Company shall elect to accept the same by written notice unto the Reliance Company and the other party or parties to any such transaction.

The term "properties" as hereafter used shall be deemed to mean and include the properties of the respective Owning Companies as next hereinabove referred to.

Section 3. Ownership.

It is understood and agreed, notwithstanding anything to the contrary herein contained, that the ownership of said properties (other than cash, securities, notes and bills and accounts receivable, book accounts, manufactured materials and materials in process, raw materials not in place, supplies actually on hand and contracts for the sale of materials, which are subject to transfer and assignment as herein provided), shall be and remain in the Owning Companies respectively, subject, however, to the provisions of the Trust Indentures above referred to; and that the Operating Company shall have no estate therein nor no rights therein or thereto except as herein provided. It is further understood and agreed that the provisions hereof are and at all times shall be subordinate and subject to the provisions of said Trust Indentures.

Section 4. Operation of Properties by Operating Company.

(a) For the purposes of maintenance and operation thereof, and the production, transportation and sale of rock and rock products therefrom, (1) the Owning Companies, subject to the provisions of the Trust Indentures above referred to, hereby vest in the Operating Company for the term hereof the possession and custody of their properties above referred to the ownership of which is retained by the Owning Companies, and (2) the Owning Companies hereby assign and transfer unto Operating Company all of their cash, securities, notes and bills and accounts receivable, book accounts, manufactured materials and materials in process, raw materials not in place supplies actually on hand and contracts for the sale of materials, and agree to furnish such other and further documents as the Operating Company may require to effectuate such assignment and transfer. The Operating Company hereby accepts said assignment and transfer and the possession and custody of the properties above referred to for the purposes herein stated; it being mutually understood, however, that the same shall be subject to the further terms and conditions hereafter set forth in this agreement.

(b) The Operating Company hereby agrees to furnish a complete operating organization with facilities for the efficient and economical production, transportation and sale of rock and rock products from the properties of the Owning Companies, and to operate such properties for the term hereof; provided, however, that the Operating Company may at its option (conditional, however, upon the preservation in the Owning Companies, of their present leasehold rights) discontinue for such time as the Operat-

ing Company may deem desirable the actual physical operation of any part or parts of said properties if the same is not consistent with the efficient and economical management of all of said properties considered as a whole.

(c) The Owing Companies hereby grant unto the Operating Company the right to use their properties for advertising purposes, including uniform painting of motor trucks and other vehicles.

(d) The Operating Company shall furnish at its own expense all materials and supplies, and all labor and superintendence, for the maintenance and operation of the properties of the Owing Companies.

Section 5. Maintenance and Upkeep.

The Operating Company shall maintain and keep in first-class operating condition all buildings, structures and equipment of every sort and nature of the Owing Companies subject to the provisions of this agreement; provided, however, that upon the termination of this agreement howsoever the Operating Company shall not be liable unto the Owing Companies to do more than to return to them their respective properties in substantially the same condition as when received by the Operating Company, appropriate allowance being made for any deferred maintenance existing at the effective date of this agreement as compared to that existing when said properties are returned, as well as items of depreciation, depletion, amortization and obsolescence hereafter referred to. The Operating Company shall be at liberty to make such additions to, betterments of, and improvements in the respective properties during the term hereof as in its

judgment may seem desirable in connection with efficient operation of the business, and to carry out such retirements and/or replacements as in its judgment are necessary to accomplish the same purpose, the costs of which additions, betterments, improvements and replacements shall be paid by the Operating Company and charged to the current account of the Owning Company or Companies involved.

Section 6. Accounting Methods.

The Operating Company agrees to keep and maintain such books and accounts for each of the Owning Companies in accordance with such modern and approved accounting methods as will comply with the requirements of the Trust Indentures above referred to, recording therein proper entries affecting depreciation, depletion, amortization and obsolescence of each of said properties as well as entries recording the transactions between the parties hereto, and other matters properly and customarily stated in books of account in recording transactions and evidencing the results thereof. The accounting methods to be used by the Operating Company pursuant to the provisions of this section shall be subject to the approval of Haskins & Sells, or other duly certified public accountants satisfactory to the Operating Company and each of the Owning Companies as to their respective properties.

Section 7. Compliance by Owning Companies with provisions of Trust Indentures.

The Operating Company hereby undertakes and agrees to pay unto the Union Company and unto the Consumers Company such amounts from time to time as will enable them punctually to carry out and perform all pro-

visions of said Trust Indentures relating to payment of bond interest and provisions relating to sinking funds; and the Operating Company agrees as the agent of the Union Company to carry out and perform in so far as it lawfully may the particular covenants of the Union Company as contained in Article III, Section 3 and 4, Sections 7 to 10, inclusive, the last sentence of the first paragraph of Section ii, Sections 16 to 19, inclusive, and Section 21 of said Trust Indenture of September 1, 1927, and the Operating Company further agrees as the agent of the Consumers Company to carry out and perform in so far as it lawfully may the particular covenants of the Consumers Company as contained in Article III, Section 3, Sections 6 to 9, inclusive, the last sentence of the first paragraph of Section 10, Sections 15 to 17, inclusive, and Section 19 of said Trust Indenture of July 1, 1928; and as the agent of the Reliance Company the Operating Company shall in so far as it lawfully may carry out and perform the same duties and obligations with respect to the Reliance Company in so far as the same, irrespective of Trust Indenture, may be applicable thereto, including payment of all taxes, charges and assessments of every sort and nature; but with the further understanding that the Operating Company shall be privileged under the provisions of the law of the United States as it is or hereafter may be to file consolidated income tax returns and to pay the same upon behalf of all the parties to this agreement. All funds in connection with performance by the Operating Company of its obligations in this section stated shall be furnished and paid by the Operating Company, but all payments made by the Operating Company with respect to sinking funds for redemption of bonds shall be charged to the current accounts of the Union Company and the Consumers Company, respectively.

Section 8. Claims and Suits.

The Operating Company hereby undertakes and agrees (1) to indemnify the Owing Companies against and to hold them and all of them harmless from all claims, demands, actions, causes of action, judgments and awards of every sort and nature by reason of injury to or death of persons or loss of or damage to property caused by or arising from, either directly or indirectly, the operations of the Operating Company hereunder; and (2) upon behalf of the Owing Companies respectively to defend and/or settle and pay any claims or suits against any of the Owing Companies existing and of which the Operating Company had knowledge on the effective date of this agreement, but expressly excepting and excluding any claims or suits against any of said Owing Companies not a matter of record upon the books of the Owing Companies upon said date and unknown to the Operating Company, and further expressly excepting and excluding any claims or suits based upon or growing out of any contracts for the purchase of materials or supplies unless the Operating Company shall have elected to accept the same as hereinabove provided. All amounts, including costs and expenses incident to matters covered by this subdivision (2) of this section paid by the Operating Company shall be deemed paid by it as agent and upon behalf of the Owing Companies, respectively, and such payments shall thereupon be taken into the accounts of the parties and shall reflect themselves in the current accounts of said parties.

Section 9. Assumption by the Operating Company of Liabilities.

The Operating Company hereby assumes and agrees to pay on behalf of the Owing Companies all notes, bills and accounts payable appearing upon the books or records of the Owing Companies on the effective date of this agreement and any other bills payable not so appearing, but of which the Operating Company had notice on or prior to said date; provided, however, that the Operating Company shall be privileged to defend the same or any thereof if illegal, unjust or otherwise inequitable or unfair, and provided further that the Operating Company does not assume or agree to pay any notes, bills or accounts payable based upon or growing out of any contracts for the purchase of materials or supplies unless the Operating Company shall have elected to accept the same as hereinabove provided. All payments made by the Operating Company pursuant to the provisions of this section shall be deemed paid by it as agent and upon behalf of the Owing Companies, respectively, and such payments shall thereupon be taken into the accounts of the parties and shall reflect themselves in the current accounts of said parties.

Section 10. Operating Expenses and Revenues.

The Operating Company hereby undertakes and agrees to bear and pay the following operating expenses, namely: (a) all maintenances and operating expense of the properties herein referred to during the term hereof, including that of its own operating organization which shall act solely and exclusively in the premises, (b) all expense incident to the maintenance of the corporate expense of

the respective parties hereto, (c) amounts equivalent to installments of interest on funded debt as required by said Trust Indentures (as hereinabove in Section 7 referred to, wherein provision is also made for payment by the Operating Company of such amounts from time to time as will enable the Union Company and the Consumers Company to carry out and perform all provisions of said Trust Indentures relating to sinking funds for redemption of bonds), (d) all taxes, state and Federal (for the purposes hereof deemed operating expense), and (e) all other operating charges and expenses of the Owning Companies of every sort and nature, including items of depreciation, depletion, amortization and obsolescence, which items (not involving a cash outlay) shall be credited to the current account of the Owning Companies and shall be paid to said Owning Companies as and when provided in Section 14, hereof, and in considerations thereof the Operating Company shall be and it is hereby authorized to retain for its own use and benefit all net revenues from the operation of said properties.

Section 11. Compensation.

Since the Operating Company herein covenants and agrees to furnish the Owning Companies with a complete operating organization with facilities for the efficient and economical production, transportation and sale of rock and rock products from the properties of the Owning Companies, thus relieving the Owning Companies of the burden of maintaining separate and distinct operating organizations, and since under the provisions hereof the

Operating Company covenants and agrees to pay the amount of all fixed charges and all other expenses of the Owning Companies and to protect them and each of them against any operating deficit, it is distinctly understood and agreed that the covenants of the Operating Company herein contained shall be and they are full and adequate consideration for the covenants of the Owning Companies herein set forth.

Section 12. Option to Purchase.

Each of the Owning Companies hereby grants unto the Operating Company throughout the term hereof the option to purchase its properties the ownership of which is retained pursuant to the provisions of Section 3 hereof, in consideration of payment of a sum of money equivalent to the appraised value of said properties as determined by a board of three appraisers, one to be appointed by the Operating Company, one by the Owning Company involved, and the third by the two appraisers so appointed; provided, however, that with respect to the properties of the Union Company and the Consumers Company the price to be paid shall not in any event be less than the redemption price of all then outstanding bonds, plus accrued interest.

Should the Operating Company consider the advisability of the purchase of the properties of any of the Owning Companies it may require the appraisal above referred to by written demand therefor, naming its appraiser. Within thirty (30) days after receipt of such demand the Owning Company shall name its appraiser and notify

the Operating Company in writing thereof, but if within said period the Owing Company shall not have chosen its appraiser and notified the Operating Company in writing thereof, the Operating Company shall have the right to name the Owing Company's appraiser, the Owing Company to be notified in writing thereof. The two so appointed shall appoint the third appraiser. Should the board of three appraisers be unable to agree as to the value of said properties, they shall call in two additional appraisers and the decision of the majority of said board of five shall be deemed the value of said properties. The Operating Company shall have thirty days after receipt of the written return of said appraisers within which to elect to exercise said option. Exercise of said option shall be by notice in writing. All costs of appraisement shall be borne and paid by the Operating Company.

Section 13. Term.

Unless earlier terminated by mutual consent of all parties hereto, this agreement shall remain in effect until terminated by thirty (30) days written notice by all of the Owing Companies unto the Operating Company, or conversely by thirty (30) days written notice from the Operating Company unto all of the Owing Companies; it being further provided in this connection that should any one or more of the Owing Companies wish to withdraw herefrom during the term hereof it or they shall have the privileges of so doing upon giving the notice hereinabove mentioned; and conversely should the Operating Company desire at any time during the term hereof

to discontinue operation of any one or more of said properties it may do so by such thirty (30) days notice to the owner or owners of said property or properties.

Section 14. Final Accounting.

Upon termination of this agreement as to any one or more of said Owing Companies the possession and custody of the properties of such company or companies the ownership of which is retained pursuant to the provisions of Section 3 hereof shall be revested by the Operating Company in the owner or owners thereof, and in that event a financial adjustment shall be made as between the Operating Company and any such Owing Company or Companies, in accordance with the current account of the parties on date of return of said properties; and payment shall thereupon be made in accordance therewith.

Section 15. Successors and Assigns.

This agreement shall be binding upon the respective successors and assigns of the parties hereto; provided, however, that the Operating Company shall not assign this agreement or any right or privilege herein conferred without the written consent of the Owing Companies then party hereto.

Section 16. Benefits of this Agreement.

It is distinctly understood and agreed that this agreement is entered into for the mutual benefit of the parties hereto, that it is not made expressly or at all for the benefit of any third person as that term is used in Sec-

tion 1559 of the Civil Code of the State of California, and that said parties hereto and their respective successors and assigns alone shall exercise and enjoy the rights and privileges hereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed upon their behalf by their respective officers thereunto duly authorized, and their respective corporate seals hereunto affixed, as of the date herein first written.

Attest:

John D. Gregg
Secretary

CONSOLIDATED ROCK
PRODUCTS CO.,

By B. F. Nysewander, Jr.

Its Vice-President.

Attest:

Robert Mitchell
Secretary

UNION ROCK COMPANY

By S. W. Burford

Its President

Attest:

Robt. Mitchell
Secretary

CONSUMERS ROCK &
GRAVEL COMPANY, INC.,

By S. W. Burford

Its President.

Attest:

Robt. Mitchell
Secretary

RELIANCE ROCK COMPANY,

By S. W. Burford

Its President

Approved as to form
Bauer, Wright & McDonald
by Pettit

MODIFICATION OF OPERATING AGREEMENT

This agreement made and entered into in quadruplicate original this 16th day of February, 1933, by and between

CONSOLIDATED ROCK PRODUCTS CO., a corporation duly organized and existing under the laws of the State of Delaware, party of the one part, hereinafter called "Operating Company", and

UNION ROCK COMPANY, a corporation duly organized and existing under the laws of the State of Delaware, hereinafter called "Union Company", and

CONSUMERS ROCK AND GRAVEL COMPANY, INC., a corporation duly organized and existing under the laws of the State of Delaware, hereinafter called "Consumers Company", and

RELIANCE ROCK COMPANY, a corporation duly organized and existing under the laws of the State of Delaware, hereinafter called "Reliance Company", parties of the other part, for convenience referred to hereinafter collectively as "Owning Companies"; all of the parties hereto being duly authorized to do and doing business in the State of California.

WITNESSETH:

THAT WHEREAS the parties hereto, under date of July 15, 1929 but effective as of April 1, 1929, entered into a certain agreement, designated "Operating Agreement", setting forth the mutual obligations of the parties hereto, concerning operation by operating company of the properties of Owning Companies, and

WHEREAS under said agreement it was provided that Operating Company was to be charged with depreciation,

amortization, depletion and obsolescence, hereinafter referred to as "depreciation", on the properties of the Owning Companies, without setting forth the basis therefor, and whereas depreciation has been set up by the accountants based on the then book value of Owning Companies' properties, and

WHEREAS it appears to Operating Company and Owning Companies that the depreciation on said basis was and is unfair, inequitable and actually not contemplated by the parties at the time the agreement was entered into, and

WHEREAS said agreement contains no default provision and it is believed that one should be set forth, and

WHEREAS, pursuant to said agreement it was provided that any party thereto could terminate said operating agreement as to its particular property upon 'thirty days' written notice of its intention so to do, and

WHEREAS Operating Company is unwilling to proceed further under said operating agreement unless it is revised and changed both as to said depreciation and as to said termination, and

WHEREAS it is deemed not only extremely desirable and advantageous to Owning Companies that said operating agreement continue, but is also deemed fair and equitable and in accordance with what should have been the original agreement of the parties hereto, that said depreciation be adjusted along the lines hereinafter set forth and that said agreement be for a fixed period terminable prior thereto only with the written consent of Operating Company and any two of Owning Companies, so that no one of Owning Companies, nor Operating Company, can

withdraw from said operating agreement and thereby actually destroy the purpose thereof, and

WHEREAS Operating Company is willing as a part of the consideration for the execution of this agreement to forego and cancel its option to purchase the property of Owing Companies set forth in Section 12 of the above mentioned operating agreement,

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by Operating Company to each of Owing Companies, receipt of which is hereby respectively acknowledged, and also in consideration of the covenants and agreements herein contained, it is mutually understood and agreed that said operating agreement is hereby modified in the following manner, to-wit:

1. That the option to purchase set forth in Section 12 is hereby eliminated and cancelled.

2. That anything in said operating agreement contained to the contrary notwithstanding—and regardless of how said item may be absorbed or set up by the individual Owing Companies—the “depreciation” to be credited to the Owing Companies’ account by the Operating Company shall actually be credited only upon the termination of the agreement and that at said time it shall be arrived at upon the following basis: The Operating Company and each Owing Company shall within five days after such termination appoint one appraiser. Within five days thereafter the appraiser of the Operating Company with the appraiser from each respective Owing Company shall appoint a third appraiser. Within ninety

days after the appraisers are so appointed, they shall as to the respective properties ascertain the amount of the depreciation which should be credited to the respective Owning Companies for the period of the agreement, starting April 1, 1929 and ending with the date of termination. Such depreciation shall be based upon the appraised actual values of said properties, regardless of book values, starting April 1, 1929 and reappraised as of the first day of April of each year thereafter. The basis of depreciation shall also be determined by said appraisers in such report and shall be such basis as is usual and customary in said business—taking into consideration the use made thereof by Operating Company—and fair and equitable to the Operating Company and the respective Owning Companies. The figures so arrived at shall be the amount to be credited to the account of the Owning Companies respectively, and settlement between the Operating Company and the respective Owning Companies shall be made within ten days after the completion of said appraisal in accordance with the current account of the parties on said date. It is specifically understood and agreed, however, that in the financial adjustment and payment between the Operating and Owning Companies, as herein and in said Operating Agreement specified, the portion of such adjustment represented by "depreciation", determined as aforesaid, may be paid by Operating Company to the respective Owning Companies in cash, or at Operating Company's option may, with a 5% penalty added thereto, be paid 25% in ten equal annual installments and the entire balance at the end of the tenth year. Said installments shall be evidenced by separate promissory notes bearing interest at the rate of 5% per annum, payable at maturity.

The Operating Company may appoint one appraiser for appraisal of all of the Owning Companies' properties, or may appoint one for each of them, or make such appointments in any manner it sees fit. Owning Companies may each appoint separate appraisers or may jointly appoint one appraiser for all their properties. In any event, however, the appraisals shall be separate as to each Owning Company. The expense of the appraisals shall be borne one-half by the Operating Company and one-half by the respective Owning Companies, or the respective Owning Companies may together pay their proportions of one-half if only one appraiser is appointed by them jointly.

Should either of the parties hereto fail to appoint its appraiser within the time herein named, or should the two so appointed fail to appoint a third within the stated period, then either party not in default in such appointment may make application to the presiding Judge of the Superior Court of Los Angeles County for such appointment, and any appraiser or appraisers so appointed shall have like powers to those which would have vested in an appraiser had he been appointed as hereinabove set forth.

3. That in lieu of the term specified in Section 13 of said operating agreement, the term shall be five years from the date hereof, subject, however, to termination prior thereto in the event of default as hereinafter specified or by written consent to earlier termination by any two of Owning Companies and Operating Company. Operating Company is hereby given the option to extend said operating agreement as hereby modified for a further

term of five years upon the same terms and conditions, provided that notice of its intention to extend said term is given to each of owning companies within one year of the date of expiration of the original term in this paragraph specified.

4. In the event of default under said operating agreement on the part of Operating Company, any one of Owning Companies as to which a default exists may give Operating Company sixty days' written notice specifying such default, and should the default so specified be not cured within said period, then this agreement may thereupon be terminated by such Owning Company as to its properties.

In the event of default hereunder by any Owning Company and failure to cure such default within sixty days after written notice thereof is given by Operating Company to such Owning Company, then Operating Company may terminate this agreement as to such Owning Company.

In the event that any Owning Company goes into default and said agreement is terminated as to it by Operating Company as hereinabove specified, or in the event any Owning Company withdraws the whole or any part of its properties from Operating Company for any reason other than default on the part of Operating Company and termination thereby, or termination of this agreement by written consent as hereinabove specified, then such Owning Company shall forfeit its right to a settlement with Operating Company for any item of depreciation to which

it would have been entitled had the agreement been permitted to run for its full term.

Except as herein specifically modified the aforesaid operating agreement is and shall be deemed to be in full force and effect in all of its terms and conditions, it being specifically understood and agreed, however, that in case of conflict between said operating agreement and this modification agreement, this agreement shall govern.

This agreement shall inure to the benefit of and be binding upon the respective successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed by their respective officers thereunto duly authorized, and their corporate seals to be hereunto affixed, the day and year first above written.

CONSOLIDATED ROCK PRODUCTS CO.,

By F. J. TWAITS, President

By ROBERT MITCHELL, Secretary

UNION ROCK COMPANY

By F. J. TWAITS, President

By ROBERT MITCHELL, Secretary

CONSUMERS ROCK AND GRAVEL
COMPANY, INC.

By F. J. TWAITS, President

By ROBERT MITCHELL, Secretary

RELIANCE ROCK COMPANY

By F. J. TWAITS, President

By ROBERT MITCHELL, Secretary

CONSOLIDATED ROCK PRODUCTS CO.

Los Angeles, Calif.

Telephone

ADams 3111

General Offices

2730 South Alameda Street

November

26th

1937.

Mr. Frank P. Doherty

515-519 Title Insurance Building

433 South Spring Street

Los Angeles, California

Dear Mr. Doherty:

Replying to your letter of November 23rd, 1937:

1. Amount of outstanding preferred stock—285,947 shares—carried on the balance sheet at stated value of \$1,800,000.00

2. Amount of common stock issued and outstanding 397,455 shares,—carried on the balance sheet at stated value of \$1.00.

3. Amount of Union Rock Company bonds issued and outstanding as of April 1st, 1929— \$2,423,000.00
Owned by Union Rock Company 35,000.00

Net in hands of public

\$2,388,000.00

4. Amount of Consumers Rock and Gravel Company Inc. bonds issued and outstanding as of April 1st, 1929-4 \$1,500,000.00

Owned by Consumers Rock & Gravel Co., Inc.,

8,000.00

Net in hands of public

\$1,492,000.00

In consideration of items 5, 6, 7, and 8, will show separate schedules for each separate item but call attention to provisions of trust indentures regarding sinking fund deposits:

a. Union Rock Company trust indenture provides that so long as bonds are outstanding, the company shall deposit with the trustee on or before February 25th of each year the sum of \$80,000.00, and on August 25th of each year the sum of \$140,000.00, such sums to be placed in sinking fund to be used:

first to pay semi-annual bond interest

second to pay bonds due on the next succeeding serial maturity date.

third to retire bonds, either by purchase from the company, or in the open market, or call by lot.

Interest on the Union Rock Company bonds is due on March 1st and September 1st of each year, and the principal amount of \$60,000.00 par value of bonds mature serially September 1st of each year.

Mr. Frank P. Doherty -2-

November 26, 1937.

b. Consumers Rock & Gravel Company Inc., trust indenture provides payment to the trustee on or before June 25th of each year of the sum of \$45,000.00, and on or

before December 26th of each year the sum of \$87,500.00 to be applied:

first to the payment of bond interest, and

second to the retirement of outstanding bonds either by purchase from the company, or in the open market, or call by lot.

The Consumers trust indenture has a further provision allowing the company to deposit bonds at par in lieu of money in the making of payments into the sinking fund so that the actual cash obligation of the sinking fund provisions in the case of the Consumers issue, is to the extent of cash required for interest, plus amount necessary to purchase sufficient bonds in the market to make up the aggregate of requirements. Interest on Consumers bonds is due on January 1st and July 1st of each year.

5. Interest paid by Consolidated Rock Products Co. for Union Rock Company bonds:

<u>Date of Interest Payment.</u>	<u>Amount of Interest Paid</u>
9- 1-29	\$ 72,690.00
3- 1-30	70,680.00
9- 1-30	70,185.00
3- 1-31	68,085.00
9- 1-31	67,740.00
3- 1-32	65,280.00
9- 1-32	64,800.00
7-31-33	62,295.00
9- 1-33	61,485.00
	<hr/>
	\$603,240.00

6. Interest paid by Consolidated Rock Products Co.
for Consumers Rock & Gravel Company, Inc. bonds:

<u>Date of Interest Payment.</u>	<u>Amount of Interest Paid</u>
7- 1-29	\$ 45,000.00
1- 1-30	45,000.00
7- 1-30	43,665.00
1- 1-31	42,375.00
7- 1-31	41,010.00
1- 1-32	40,890.00
7- 1-32	39,495.00
2-28-33	39,330.00
7-31-33	37,875.00
1-31-34	37,665.00
	<hr/>
	\$412,305.00

Mr. Frank P. Doherty

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November 26, 1937.

7. Retirement of Union Rock Company bonds:

Date	Serial Maturities	Through Sinking Fund	Bonds turned in for Cancellation	TOTAL
9- 1-29	\$ 60,000.00			\$ 60,000.00
9-30-29		\$ 7,000.00		7,000.00
4- 1-30		16,500.00		16,500.00
9- 1-30	60,000.00			60,000.00
9-30-30		10,000.00		10,000.00
3- 1-31		11,500.00		11,500.00
9- 1-31	60,000.00	13,000.00		73,000.00
10-27-31		9,000.00		9,000.00
3- 1-32		16,000.00		16,000.00
9- 1-32	55,000.00	28,500.00		83,500.00
7-31-33		27,000.00		27,000.00
2-16-34			\$57,000.00	57,000.00
7- 5-34			13,000.00	13,000.00
	\$235,000.00	\$138,500.00	\$70,000.00	443,500.00

In lieu of depositing cash with the trustee for the retirement of bonds due September 1st, 1933, the company deposited for cancellation \$57,000.00 par value of bonds maturing at later dates. This was done after conferences with the underwriter and enabled the company to use bonds which it had purchased prior to that time on the open market, leaving the relative number of bonds outstanding equivalent to that which would have

existed had the September 1st, 1933 maturities been paid off. The reason for its being \$57,000.00 instead of \$60,000.00 was because at prior times \$3,000.00 par value of bonds of September 1st, 1933, had been retired and cancelled.

Also, note that in September, 1932, \$55,000.00 par value were retired. There had been \$5,000.00 par value of that series cancelled and retired prior to that time.

The ~~item~~ of \$13,000.00 par value retired July 5th, 1934, was bonds purchased out of proceeds resulting from the sale of Obsolete and unnecessary personal property.

8. Retirement of Consumers Rock & Gravel Company bonds:

<u>Date</u>	<u>Through Sinking Fund</u>
1- 1-30	\$ 42,500.00
1-31-30	2,000.00
7-30-30	1,500.00
8-30-30	37,000.00
11-30-30	4,500.00
1- 1-31	45,500.00
7- 1-31	4,000.00
1- 1-32	46,500.00
7- 1-32	5,500.00
2-28-33	48,500.00
7-31-33	7,000.00
1-31-34	50,000.00
7-31-34	5,000.00
	<hr/>
	\$299,500.00

Mr. Frank P. Doherty. -4- November 26, 1937

The item of July 31st, 1934, represents \$5,000.00 par value bonds which were turned in for cancellation and retirement and were purchased out of proceeds resulting from the sale of obsolete and unnecessary personal property.

9. Tonnage sold by Consolidated Rock Products Co. for the years 1929 to 1937, inclusive:

<u>Year</u>	<u>Tons Sold</u>
1929 (9 mos. 4/1 to 12-31-29)	4,770,839.76
1930	4,049,672.91
1931	2,822,785.80
1932	2,480,799.55
1933	1,974,109.92
1934	874,334.99
1935	1,111,617.34
1936	2,300,258.97
1937 (9 mos. 1/1 to 9-30)	2,031,290.37
TOTAL	22,415,709.61

10. Amount of present bonded indebtedness:

a. Union Rock Company bonds out-standing	\$1,979,500.00
Owned by Consolidated Rock Products Co.	102,500.00
Net in hands of public	\$1,877,000.00
b. Consumers Rock & Gravel bonds out-standing	\$1,200,500.00
Owned by Consolidated Rock Products Co.	63,500.00
Net in hands of public	\$1,137,000.00

11. Operating profit by years before bond interest and reserves for depreciation, depletion, amortization, etc.:

<u>Year</u>	<u>Profit</u>
1929 (9 mos. 4/1 to 12/31)	\$1,009,504.55
1930	649,778.19
1931	1,026,027.02
1932	73,848.70
1933	230,309.33
1934	21,420.90
(1/1 to 5/24	<u>\$27,301.05</u>
1935	49,092.51
(5/25 to 12/31	76,393.56
1936	201,032.29
1937 (9 mos. 1/1 to 9/30)	199,890.82
TOTAL	<u>\$3,461,504.31</u>

12. Net operating cost after allowance for bond interest and reserves for depreciation, depletion, amortization, etc., and taxes:

<u>Year</u>	<u>Net Profit or Loss</u> <u>(Loss Shown in Boldface)</u>
1929	\$ 90,276.62
1930	620,258.85
1931	24,518.04
1932	589,458.31
1933	398,665.96

Mr. Frank P. Doherty

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November 26, 1937.

Year	Net Profit or Loss (Loss Shown in Boldface)
1934	\$ 575,187.10
(1/1-5/24-)	\$258,923.37
1935	512,584.81
(5/25-12/31-)	253,661.44
1936	250,619.45
1937 (9 mos. 1/1 to 9/30)	76,608.58
	\$2,957,624.49

[Note: Figures in Boldface underlined in red.]

13. Amount of delinquent interest on Union Rock Company bonds:

Date	Bonds Held by Public	Company Owned	TOTAL
3-1-34	\$ 56,310.00	\$ 3,075.00	\$ 59,385.00
9-1-34	56,310.00	3,075.00	59,385.00
3-1-35	56,310.00	3,075.00	59,385.00
9-1-35	56,310.00	3,075.00	59,385.00
3-1-36	56,310.00	3,075.00	59,385.00
9-1-36	56,310.00	3,075.00	59,385.00
3-1-37	56,310.00	3,075.00	59,385.00
4-1-37	9,385.00	512.50	9,897.50
Total as of 4-1-37	\$403,555.00	\$22,037.50	\$425,592.50
9-1-37	46,925.00	2,562.50	49,487.50
9-30-37	9,385.00 (accrued)	512.50	9,897.50
Total as of 9-30-37	\$459,865.00	\$25,112.50	\$484,977.50

14. Amount of delinquent interest on Consumers Rock & Gravel bonds:

	Date	Bonds Held by Public	Company Owned	TOTAL
	7-1-34	\$ 34,110.00	\$ 1,905.00	\$ 36,015.00
	1-1-35	34,110.00	1,905.00	36,015.00
	7-1-35	34,110.00	1,905.00	36,015.00
	1-1-36	34,110.00	1,905.00	36,015.00
	7-1-36	34,110.00	1,905.00	36,015.00
	1-1-37	34,110.00	1,905.00	36,015.00
	4-1-37	17,055.00	952.50	18,007.50
Total as of	4-1-37	\$221,715.00	\$12,382.50	\$234,097.50
	7-1-37	17,055.00	952.50	18,007.50
	9-30-37	17,055.00 (accrued)	952.50	18,007.50
Total as of	9-30-37	\$255,825.00	\$14,287.50	\$270,112.50

15. Amount of delinquent installments on redemption of Union Rock Company bonds:

Date	Serial Maturities		Sinking Fund	TOTAL
	In Hands of Public	Owned by Consolidated		
9-1-33	\$56,000.00	\$1,000.00	\$ 21,515.00	\$ 78,515.00
3-1-34			20,615.00	20,615.00
9-1-34	59,000.00		21,615.00	80,615.00
3-1-35			20,615.00	20,615.00
9-1-35	50,000.00		30,615.00	80,615.00
3-1-36			20,615.00	20,615.00
9-1-36	58,000.00	2,000.00	20,615.00	80,615.00
3-1-37			20,615.00	20,615.00
9-1-37	52,000.00	5,000.00	23,615.00	80,615.00
	\$275,000.00	\$8,000.00	\$200,435.00	\$483,435.00

Mr. Frank P. Doherty

6

November 26, 1937.

We have shown serial maturity for September 1st, 1933, a total of \$57,000.00 as delinquent, but call attention to the fact that the company turned in \$57,000.00 par value of bonds for retirement in lieu of that maturity, which is explained above:

16. Amount of delinquent installments on redemption of Consumers Rock & Gravel bonds:

<u>Date</u>	<u>Sinking Fund</u>	<u>Total</u>
7-1-34	\$ 8,985.00	\$ 8,985.00
1-1-35	51,485.00	51,485.00
7-1-35	8,985.00	8,985.00
1-1-36	51,485.00	51,485.00
7-1-36	8,985.00	8,985.00
1-1-37	51,485.00	51,485.00
7-1-37	8,985.00	8,985.00
	<hr/>	<hr/>
	\$190,395.00	\$190,395.00

Please note that while the above figures are shown in cash, the Consumers trust indenture allows the company to deposit bonds at par in lieu of money in making such payments, so that the actual cash requirement would be the amount necessary to purchase additional bonds on the open market for that purpose.

I trust that the above will give the information desired. Copies of this letter are being sent to the attorneys mentioned in your letter of November 23rd.

Respectfully yours,

CONSOLIDATED ROCK PRODUCTS CO.

Robt. Mitchell (Signed).

Vice-President.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION.

In the Matter of)	
	)	In Proceedings
CONSOLIDATED ROCK PROD-	)	for the
UCTS CO., a Delaware corpora-	)	Reorganization
tion,	)	of a Corporation
)	
Debtor,)	
	)	No. 25816-H
UNION ROCK COMPANY, a)	
corporation,)	
	)	ORDER
Subsidiary,	)	APPROVING
	)	SPECIAL
CONSUMERS ROCK & GRAVEL	)	MASTER'S
COMPANY, INC., a corporation,	)	REPORT
)	
Subsidiary.)	

The findings and report of Frank P. Doherty, Esq., as Special Master in the above entitled cause, having been filed herein on February, 1938, in accordance with the order made herein on November 2, 1937, entitled "Order Appointing Special Master to Hear the Matter of the Proposal, Consideration and Confirmation of the Plan of Reorganization of Consolidated Rock Products Co., Dated March 15, 1937 and Objections Thereto," and no objections to said findings and report having been made or filed herein, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that said findings and report of Special Master, dated February, 1938, and filed herein on February, 1938, be and the same hereby are approved and confirmed, and said findings and report are hereby adopted as the findings and conclusions of this Court; and

IT IS FURTHER HEREBY ORDERED that counsel for the proponents of said Plan of Reorganization shall proceed with the organization of the new corporation referred to in said Plan and the preparation of the documents necessary for the consummation of said Plan; that the out-of-pocket expenses in connection therewith shall be paid by the Debtor; and that all such documents shall be submitted to this Court for approval; and

IT IS FURTHER ORDERED that counsel for the proponents of said Plan shall prepare a form of order for the confirmation of said Plan in accordance with Section 77B of the Bankruptcy Act and the rules of this Court, and submit such form of order to this Court for formal entry.

Dated:, 1938.

UNITED STATES DISTRICT JUDGE.

[Endorsed]: Filed R. S. Zimmerman, Clerk, at 58 min. past 10 o'clock Feb. 14, 1938 A. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

EXCEPTIONS OF OBJECTOR E. BLOIS duBOIS
TO FINDINGS AND REPORT OF SPECIAL
MASTER AND OBJECTIONS TO PLAN OF
REORGANIZATION HEREIN DATED MARCH
15, 1937 AS RECOMMENDED.

Comes now E. BLOIS duBOIS, an Objector of record to confirmation of the Plan of Reorganization of the above named debtor corporations, submitted by Consolidated Rock Products Co., Union Rock Company Bondholders' Protective Committee and Consumers Rock & Gravel Company, Inc. Bondholders' Protective Committee, dated March 15, 1937, and excepts to the Findings and Report of the Special Master, Frank P. Doherty, Esq., filed herein February 14, 1938, in the following particulars, to-wit:

To that portion of the Findings captioned "Subsequent Betterments and Additions to Equipment of Union Company and Consumers Company," and to each and every part thereof, Master's Report, pages 21 and 22, reading as follows, commencing in line 10, page 21:

"The evidence shows that substantial sums were expended by Consolidated in the repair and maintenance of the properties of the Union Company, Consumers Company, and Reliance Company, and also that the trucks and automobiles and portions of the other equipment of the three above mentioned subsidiaries became unserviceable and worn out in the usual course of the operations in the carrying on of the business by consolidated, and

that equipment was purchased by Consolidated out of the funds and moneys of Consolidated to replace said worn out and unserviceable equipment and to purchase new and additional trucks and equipment and appliances. The evidence further shows that in some instances the trucks and automobiles which were worn out and unserviceable were turned in or delivered as a part payment on account of the new trucks and other equipment acquired by Consolidated; that such new and renewed equipment so purchased by Consolidated was necessary, proper, and essential to the carrying on of the business of Consolidated and its subsidiaries; that the funds with which said new and additional equipment was purchased and paid for were supplied by Consolidated from the usual operating revenues of the properties of the Union Company, Consumers Company, and Reliance Company, and also from the properties of Consolidated, and also from proceeds received by Consolidated from the sale of its stock to the public. The evidence further shows that there was such commingling of said funds last hereinabove referred to as to make it impracticable, from an accounting or other standpoint, to determine the amount of money from either or all of the respective sources which was used to replace, renew, or purchase additional trucks, automobiles, and other appliances and equipment used by Consolidated in and about the business. It is therefore found that, assuming that the lien of the Trust Indentures of the Union Company and the Consumers Company pursued and attached to such new, renewed, and additional equipment so as to subject said trucks, automobiles, appliances, and other equipment to the lien of said Trust Indenture and as security for the bonds issued thereunder, it is both impracticable and, from an accounting standpoint, impossible to determine to what extent the equipment now owned and

operated by Consolidated is a renewal, replacement, or substitution of such automobiles, trucks, appliances, and other equipment of the Union Company, the Consumers Company, and the Reliance Company, or is new equipment purchased by Consolidated for and on its own account from the proceeds resulting from the operation of the properties by Consolidated or from the funds received from the sale of Consolidated stock, and therefore not subject to the lien of said Trust Indentures, Special Master's Exhibits 12 and 13."

II.

To that portion of the Findings captioned "Plan is Fair and Has been Approved by Required Percentage of Bondholders and Stockholders," Master's Report, page 25, finding the Plan of Reorganization to be fair to the bondholders of Union Rock Company and/or Consumers Rock & Gravel Company, Inc., and to the further portion of the Findings under said caption, commencing at the end of line 28, page 27 of the Master's Report, and reading as follows:

"It is found that the Consolidated stockholders have substantial equities in the properties included in the plan of reorganization, and that the interests and rights granted said stockholders under the plan of reorganization are not out of proportion to the equities of said stockholders, considering their contribution to the existing properties now represented by the consolidated companies and that the plan of reorganization is fair, just and equitable with respect to the rights of said stockholders."

III.

To all that portion of the Findings captioned "Findings with Respect to the Objections of Objector E. Blois duBois," Master's Report, page 28, commencing at line 18, page 29, and reading as follows:

"The main and principal objection of Mr. duBois to the plan of reorganization may be summarized as follows: That the stockholders of Consolidated have no equity in or to the properties represented by the plan of reorganization, and that said stockholders should not be given any right or interest under said plan, and that the entire properties of the Union Company, Reliance Company, Consumers Company and of Consolidated, including all of the equipment, trucks, automobiles and appliances, be available for sole benefit of the bondholders of the Union Company and Consumers Company. The evidence shows that the objection of Mr. duBois is without merit or support. The other objections of Mr. duBois, as presented in his written objections and at the hearing, have been covered by other portions of these findings and are likewise without merit or support."

and to the failure of the Master to find specifically upon the several objections to the Plan of Reorganization presented in the written objections of said E. Blois duBois on file herein.

IV.

To that portion of the Findings captioned "Independent Appraisal," Master's Report, page 30, and each part thereof, reading as follows:

"The plan of reorganization, as heretofore found, is the result of nearly two years of conscientious effort

of opposing and conflicting interests. The evidence developed that there has been such a commingling of the assets and properties, including the funds from the sale of stock of Consolidated, that an appraisal of the properties would be of no value to the court and would be of such indefinite and unsatisfactory nature as to produce further confusion, and a separate, independent appraisal would result in unnecessary and great delay and expense to all parties. Its benefits would be highly problematical. There is no evidence that the plan of reorganization has dealt unfairly or inequitably with the bondholders of the Union and Consumers companies or the stockholders of Consolidated. All interests are unanimous in their conviction that none of the interests are receiving as much as they are entitled to. The evidence shows, however, that the division of the respective interests in the plan of reorganization not only presents a feasible and workable plan, but likewise has taken into consideration all of the claims, equities and rights of the bondholders and stockholders and has arrived at a plan which gives full recognition to the rights and equities of each class,"

and to the failure of the Master to order disinterested appraisal of the assets of the respective corporations proposed to be transferred to the new corporation in effecting reorganization of the debtor companies, or otherwise to evaluate the interests of the respective parties to the Plan of Reorganization.

V.

To the failure of the Special Master to find upon the question of the solvency of Union Rock Company and/or Consumers Rock & Gravel Company, Inc.

VI.

To the failure of the Special Master to find upon the validity of the agreement purported to have been entered into by Consolidated Rock Products Company, Union Rock Company, Consumers Rock & Gravel Company, Inc. and Reliance Rock Company under date of February 16, 1933, purporting to modify the original operating agreement entered into by said companies under date of July 15, 1929, copies of which agreements are attached to the Special Master's Report as exhibits.

VII.

To the failure of the Special Master to make any finding with respect to the indebtedness owing by Consolidated Rock Products Company, Union Rock Company, Consumers Rock & Gravel Company, Inc. and/or Reliance Rock Company, one to the other, under the written agreements referred to in Exception VI above.

The exceptions to the specific findings of the Special Master referred to in Exceptions I, II, III and IV above are based upon the fact that said specific findings are contrary to the evidence adduced before the special master showing:

(1) That funds used by Consolidated Rock Products Company for making repairs, subsequent betterments and additions to the equipment and properties of Union Rock Company and Consumers Rock & Gravel Company included funds taken over by Consolidated Rock Products Company from the subsidiaries at the time of the so-called consolidation, or commencement of joint operation, as

well as from operation and exploitation thereafter of the properties of the subsidiaries, and that pursuant to the covenants of the original operating agreement of July 15, 1929 full and complete books of account were kept showing the charges for such improvements and betterments against the respective companies, and that no such confusion of assets has resulted that definite determination as to what properties belong to the respective companies, the true valuation thereof, and to what liens such assets may be subject, cannot be determined;

(2) That Consolidated Rock Products Company, as the sole stockholder of Union Rock Company and Consumers Rock & Gravel Company, Inc., has no substantial or other equity in either company, is indebted to said subsidiaries under the operating agreement attached to the Special Master's report in an amount in excess of \$6,000,000.00, which it is unable to pay, and has no property of substantial value to contribute to the Plan of Reorganization so as to justify its retention of equity ownership while bonded indebtedness is being halved, accrued interest waived and future interest reduced;

(3) That confusion is present with respect to the actual value of the assets of Union Rock Company, Consumers Rock & Gravel Company and Consolidated Rock Products Company and that disinterested appraisal of assets is essential to proper evaluation of the interests of the respective parties to the Plan of Reorganization so as to permit the court to pass upon the fairness of the plan;

(4) That the objections of Objector E. Blois duBois to the unfairness of the plan are meritorious and that the plan contemplates a reduction of the lien interest of the bondholders for the benefit of the stockholders of Consolidated Rock Products Company, who at the present have no substantial equity and are called upon to make no sacrifice whatever under the Plan of Reorganization.

Exception to the failure of the Special Master to find upon the matters referred to at the conclusion of Exception III, at the conclusion of Exception IV and in Exceptions V, VI and VII is based upon the fact that reference to the Special Master was made in part for the purpose of passing upon the matters as to which no findings have been made, and that findings upon said matters are essential to proper determination of the issues before the Court, including the fairness of the Plan of Reorganization and the respective rights of the various parties interested therein.

For the reasons stated, said Objector, E. Blois duBois, objects to confirmation by the Court of the Plan of Reorganization pursuant to the recommendation of the Special Master.

Dated: March 4, 1938.

John G. Mott
Paul Vallee
Kenneth E. Grant

Attorneys for Objector to Plan of
Reorganization, E. Blois duBois.

Received copy of the within EXCEPTIONS OF OBJECTOR E. BLOIS duBOIS TO FINDINGS AND REPORT OF SPECIAL MASTER AND OBJECTIONS TO PLAN OF REORGANIZATION HEREIN DATED MARCH 15, 1937 AS RECOMMENDED this 4th day of March, 1938.

O'MELVENY, TULLER & MYERS,

By Milton A. Taylor

Attorneys for Union Rock Company
Bondholders' Protective Committee.

LATHAM, WATKINS & BOUCHARD,

By I. V. Hughes

Attorneys for Consolidated Rock
Products Company.

GIBSON, DUNN & CRUTCHER,

By

Attorneys for Consumers Rock &
Gravel Co., Inc. Bondholders' Protective Committee.

Received copy of the within document Mar 4 1938

GIBSON, DUNN & CRUTCHER

Per A

ALFRED E. ROGERS (C).

(Alfred E. Rogers)

Attorney for T. C. Rogers.

E. S. WILLIAMS

(E. S. Williams)

In Propria Persona.

STANLEY ARNDT

(Stanley Arndt)

[Endorsed]: Filed R. S. Zimmerman, Clerk at 49 min past 2 oclock. Mar 4, 1938 P. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

SUPPLEMENTAL EXCEPTION OF OBJECTOR E.
BLOIS duBOIS TO FINDINGS AND REPORT
OF SPECIAL MASTER AND OBJECTIONS
TO PLAN OF REORGANIZATION HEREIN
DATED MARCH 15, 1937 AS RECOMMENDED.

Comes now E. BLOIS duBOIS and by way of supplement to his Exceptions to the Findings and Report of the Special Master herein adds the following further exception to said Report and Findings:

VIII.

With reference to the Findings of the Special Master as to the value of the properties involved, Master's Report, pages 22 to 25, both inclusive, exception is taken to the value of \$1,000,000.00 placed upon the assets of Consolidated Rock Products Company and the value of \$500,000.00 placed upon its good will and going business value, on the ground that said Findings, and each of them, are not supported by the evidence and that the finding as to good will and going business value is not supported by competent testimony, but merely by the guess and speculation of one witness.

Dated: March 5, 1938.

John G. Mott

Patil Vallee

K. E. Grant

Attorneys for Objector to plan
of Reorganization, E. BLOIS
duBOIS.

Received copy of the within SUPPLEMENTAL-EXCEPTION OF OBJECTOR E. BLOIS duBOIS TO FINDINGS AND REPORT OF SPECIAL MASTER AND OBJECTIONS TO PLAN OF REORGANIZATION HEREIN DATED MARCH 15, 1937 AS RECOMMENDED.

O'MELVENY, TULLER & MYERS

3-5-38 By Milton A. Taylor

Attorneys for Union Rock Company
Bondholders' Protective Committee.

LATHAM, WATKINS & BOUCHARD,

Mar. 5, By Paul R. Watkins

1938

Attorneys for Consolidated Rock
Products Company.

GIBSON, DUNN & CRUTCHER,

Received copy
of the within
Document

Gibson, Dunn

Mar 5 1938

& Crutcher

Per A

Attorneys for Consumers Rock &
Gravel Co., Inc. Bondholders' Protec-
tive Committee.

Alfred E. Rogers

(Alfred E. Rogers)

Attorney for T. C. Rogers

3-5-38 E. S. Williams W H W

(E. S. Williams)

In Propria Persona,

3-5-38 Stanley Arndt

(Stanley Arndt)

[Endorsed]: Filed R. S. Zimmerman, Clerk at 30 min past 11 o'clock Mar 5, 1938 A. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

MOTION TO RE-OPEN HEARING WITH RE-
SPECT TO CONFIRMATION OF PROPOSED
PLAN OF REORGANIZATION

Comes now E. BLOIS duBOIS, an objector of record in the above entitled matter to confirmation of the plan of reorganization heretofore proposed herein by Consolidated Rock Products Company, Union Rock Company Bondholders' Protective Committee and Consumers Rock & Gravel Company, Inc. Bondholders' Protective Committee, by his undersigned attorneys, and respectfully moves the court to re-open the hearing with respect to confirmation of the proposed plan of reorganization, and objections thereto, upon the ground that: A consideration of the marked improvement in the financial and business condition of the debtor companies involved in these proceedings, as shown by earnings statements for the period since the previous hearing herein, is essential to proper disposition of the cause and confirmation or rejection by the court of the proposed plan of reorganization.

Dated: Los Angeles, California, July 22, 1938.

MOTT, VALLEE AND GRANT

Kenneth E. Grant

John G. Mott

Paul Vallee

Attorneys for E. Blois duBois, Ob-
jector to Plan of Reorganization.

Received copy of the within Motion to re-open Hearing with respect to Confirmation of Proposed Plan of Reorganization this 22nd day of July, 1938.

LATHAM WATKINS & BOUCHARD,

By I. V. Hughes

Attorneys for Consolidated Rock
Products Company

O'MELVENY, TULLER & MYERS,

By Milton A. Taylor

Attorneys for Union Rock Company
Bondholders' Protective Committee

GIBSON, DUNN & CRUTCHER,

Attorneys for Consumers Rock &
Gravel Company, Inc. Bondholders'
Protective Committee

Stanley Arndt

(Stanley Arndt) I B

Attorney for Preferred Stockholders
Committee

Alfred E. Rogers

(Alfred E. Rogers)

Attorney for T. C. Rogers

[Endorsed]: Received copy of the within Document
Jul 22 1938. Gibson, Dunn & Crutcher Per A Filed
R. S. Zimmerman, Clerk at 18 min. past 11 o'clock Jul.
22, 1938 A. M. By R. J. Clifton Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

AFFIDAVIT IN SUPPORT OF MOTION TO RE-
OPEN HEARING ON PLAN OF REORGANI-
ZATION PROPOSED, "AND OBJECTIONS
THERE TO No. 25816-H

STATE OF CALIFORNIA)

) ss

County of Los Angeles)"

KENNETH E. GRANT, being first duly sworn, on oath deposes and says:

That he is a member of the law firm of Mott, Vallee & Grant, attorneys at law, with offices in the City of Los Angeles, California, and one of the attorneys of record herein for E. Blois duBois, an objector to the plan of reorganization of the debtor companies involved herein proposed by Consolidated Rock Products Co., Union Rock Company Bondholders' Protective Committee and Consumers Rock & Gravel Company, Inc. Bondholders' Protective Committee.

That hearing on objections to said plan of reorganization was had before Frank P. Doherty, Special Master, on November 8, 9, 10, 12, 15 and 17, 1937, and thereafter, on or about February 14, 1938, said Special Master filed herein his findings and report; that subsequent thereto hearing on exceptions taken to the said findings and report of the Special Master was had in the above entitled court and the matter was then taken under submission by the court; that since November 11, 1937, when the taking of evidence in support of and in opposition to the proposed plan of reorganization was completed before the Special Master, there has been a marked improvement in the financial and business condition of the debtor companies involved in these proceedings as shown by the published statements of earnings issued by them.

That the following facts have come to the attention of affiant:

1. During the first six months period of 1938 Consolidated Rock Products Co., and its wholly owned subsidiaries Union Rock Company and Consumers Rock & Gravel Co., Inc., returned a consolidated net profit of \$25,255.00 after payment of all charges, including provision for bond interest, depletion, depreciation and amortization, said net profit contrasting with a consolidated net loss for the like period of 1937 of \$37,077.00.

2. Net income for the first six months of 1938, before provision for bond interest, depreciation, depletion and amortization, was \$195,660.00 against \$146,407.00 in the like period of 1937, or an increase of \$49,253.00.

3. Sales in the first six months of 1938 aggregated \$1,711,402.00 against \$1,750,203.00 in the corresponding period of 1937.

That it appears from the foregoing that the improvement in the financial and business condition of the companies involved herein has been such that they are able on the basis of current earnings to service their outstanding bonds and to make proper provision for depletion, depreciation and amortization.

That in the light of the present condition of said companies the drastic treatment of the bonded indebtedness of said companies, and the holders thereof, contemplated in the plan of reorganization now before the court, is entirely unnecessary, to rehabilitation of the companies, and eminently unfair to the aforesaid objector E. Blois du Bois and other owners of bonds of the subsidiaries Union Rock Company and Consumers Rock & Gravel Company, Inc.

Kenneth E. Grant

Subscribed and sworn to before me this 21st day of
July, 1938.

[Seal]

Katherine Spengler

Notary Public in and for the County of Los Angeles,
State of California

Received copy of the within Notice of Motion to Re-
Open Hearing with respect to Confirmation of Proposed
Plan of Reorganization, and Affidavit in support of said
Motion, this 22nd day of July, 1938.

LATHAM, WATKINS & BOUCHARD,

By I V Hughes

Attorneys for Consolidated Rock
Products Company

O'MELVENY, TULLER & MYERS,

By Milton A Taylor

Attorneys for Union Rock Company
Bondholders' Protective Committee

GIBSON, DUNN & CRUTCHER,

Attorneys for Consumers Rock &
Gravel Company, Inc. Bondholders'
Protective Committee

Stanley Arndt

(Stanley Arndt) I B

Attorney for Preferred Stockholders'
Committee

Alfred E. Rogers

(Alfred E. Rogers)

Attorney for T. C. Rogers

[Endorsed]: Received copy of the within Document
Jul 22 1938 Gibson, Dunn & Crutcher Per A Filed
R. S. Zimmerman Clerk at 18 min. past 11 o'clock Jul.
22, 1938 A. M. By R. B. Clinton Deputy Clerk

[TITLE OF DISTRICT COURT AND CAUSE.]

MOTION TO DISMISS "MOTION TO RE-OPEN
HEARING, ETC.", DEMURRER, OBJECTION
TO MOTION; MOTION TO EXCLUDE, ETC.

Come now the Preferred Stockholders' Committee and the members thereof and (1) move to dismiss the motion of E. Blois duBois, entitled "MOTION TO RE-OPEN HEARING WITH RESPECT TO CONFIRMATION OF PROPOSED PLAN OF REORGANIZATION"; (2, demur to said motion of E. Blois duBois; (3) object to consideration of said motion of E. Blois duBois or the hearing thereof; and (4) object to the introduction of any evidence in support thereof or the consideration of the affidavit attached to the notice of motion thereof.

Said motions, demurrer, and objections, and each and every one of them, are based upon each and every one of the following grounds, to-wit:

1. The motion does not state facts sufficient to constitute grounds for a motion or grounds or reasons for granting the relief prayed for or any relief whatsoever, or for the re-opening of the hearings herein.

2. The affidavit of Kenneth E. Grant, dated July 21, 1938, does not state facts sufficient to constitute grounds for a motion or grounds or reasons for granting the relief prayed for or any relief whatsoever, or for the re-opening of the hearings herein.

3. No allegation or showing is made that the alleged improvement in the financial and business condition of the debtor was not or should not have been reasonably contemplated at the time of the previous hearings before

the Special Master herein or at the time of the submission of the exceptions to the Special Master's report to the Court herein.

4. There is no allegation or showing made that the decreased sales as shown in the affidavit (the decrease from \$1,750,203.00 to \$1,711,402.00) reflects an improvement in the financial or business condition of the said companies or that it was a matter that was not reasonably to have been contemplated at the time of the previous hearings before the Special Master or at the time of the submission of the exceptions to the Special Master's report to the Court herein.

5. There is no allegation or showing made, and it does not appear in the motion or in the affidavit, that the increase in net income or net profit was not reasonably to have been anticipated or contemplated at the time of the previous hearings before the Special Master or at the time of the submission of the exceptions to the Special Master's report to the Court herein.

6. There is no showing or claim made, and it does not appear in the moving papers or in the affidavit, that the increase in net profit and net income was not due to economies reasonably to have been anticipated or contemplated at the time of the hearing, or was not due to improved business conditions reasonably to have been contemplated or anticipated at the time of the previous hearings, or was not due to confidence inspired in the trade because of the action of the Special Master and of the Court herein in approving the plan, or was not due to confidence and better esprit de corps within the organization of the debtor corporations because of the

actions of the Special Master and of the Court in approving the plan herein.

7. No claim or showing is made, and it does not appear in the moving papers or in the affidavit, that the better financial and business conditions claimed to exist at the present time were not in existence at the time the exceptions to the Special Master's report were submitted to the Court for the Court's hearing and determination.

8. It does not appear therein nor is any showing made that a consideration of any improvement in the financial or business condition of the debtor companies is essential to the proper disposition of the cause and confirmation or rejection by the Court of the plan of reorganization.

9. That the statement contained in the Grant affidavit, on page 3 thereof, that "the treatment of the bonded indebtedness of the said companies and the holders thereof contemplated in the plan of reorganization now before the Court is entirely unnecessary to rehabilitation of the companies and eminently unfair to the aforesaid objector E. Blois duBois and other owners of bonds" is purely a conclusion and no facts are shown or allegations made supporting such conclusion or showing how or why the treatment of the bonded indebtedness in the plan of reorganization is "entirely unnecessary to rehabilitation of the companies" or showing that it is "eminently" or at all "unfair" to the objector or any other bondholder.

10. That the the hearing before the Court herein and at the hearing before the Special Master herein, said

objector took the position that there was no equity whatsoever for the preferred stockholders and, therefore, it was improper to allow the preferred stockholders any participation in the reorganization. It does not appear in the moving papers or in the affidavit thereto whether the objector now contends that the properties are worth more than they were formerly and that there now is an equity for the preferred stockholders or whether the objector still contends that there is no equity for the preferred stockholders; nor does it appear whether the objector waives the objection he formerly strenuously advocated that there was no equity for the preferred stockholders or whether he still seeks to support that former objection while, at the same time, taking the position set forth in his moving papers.

11. That the objector does not come before the Court with clean hands and has taken inconsistent positions in that he is still maintaining his position heretofore made that the preferred stockholders have no equity and should not be included in a plan of reorganization and, at the same time, maintaining and contending that the business and financial condition of the debtor companies has so improved that there is no need for reorganization. Said objector is estopped from taking such inconsistent positions and these moving parties now move the Court to require him to make his position more certain and definite and to elect and set forth whether or not he claims and maintains that there is any equity for the preferred stockholders.

Objection is further made to the consideration of the motion of said DuBois herein on the ground that notice has not been given as required by law and that notice has not been given to the persons to whom notice was given of the original hearings before the Special Master and to whom notice was given of the hearing of the objections and exceptions to the Special Master's report filed by said DuBois.

WHEREFORE, the Preferred Stockholders' Committee and the members thereof, on behalf of themselves and on behalf of all interested parties herein, pray that no relief whatsoever be granted on said motion of DuBois to re-open the hearing herein, that said motion of DuBois be dismissed with prejudice, and for such other and further relief as may be fit and proper in the premises.

Dated, August 5, 1938.

Stanley Arndt

Attorney for Preferred Stockholders' Committee and the members thereof.

[Endorsed]: Received copy of the within Motion. Mott, Vallee & Grant, attorneys for DuBois, Gibson, Dunn and Crutcher, attorneys for Consumers B. P. C. Latham, Watkins & Bouchard, Attorneys for Debtors. O' Melveny, Tuller & Myers, attorneys for Union Rock Bondholders Committee. Filed 10:05 A. M. Aug. 5, 1938. R. S. Zimmerman Clerk By L. Wayne, Thomas Deputy.

At a stated term; to wit: The February Term, A. D. 1938, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof; in the City of Los Angeles on Friday the 5th day of August in the year of our Lord one thousand nine hundred and thirty-eight

Present:

The Honorable HARRY A. HOLLZER, District Judge.

In the Matter of)
Consolidated Rock Products Co.,) No. 25,816-H Bkey
Debtor.)

This matter coming on for hearing on motion of E. Blois du Bois to re-open hearing with respect to confirmation of proposed Plan or Reorganization, pursuant to Notice filed July 22, 1938; Graham L. Sterling, Jr., Esq., appearing for the Union Rock Company Bondholders Protective Committee; Thos. H. Joyce, Esq., appearing for the Consumers Rock Company Bondholders Protective Committee; E. W. Williams, being present in propria persona; Paul R. Watkins, Esq., appearing for the Debtor; Kenneth E. Grant, Esq., appearing for E. Blois du Bois; and H. A. Dewing being present as court reporter and reporting the proceedings; it is ordered that a reporter attend and that his fees be paid by the Debtor estate:

Attorney Arndt moves to dismiss motion to re-open hearing and files motion to dismiss "Motion to Re-Open Hearing, Demurrer, Objection to Motion and Motion to Exclude, etc."

Attorney Grant argues in support of motion to re-open hearing and moves that Financial Statement of June 30, 1938, and Master's Report and Petition of the Debtor for leave to pay off mortgaged indebtedness, filed July 31, 1938, be admitted in evidence for the purpose of this motion, and there being no opposition it is so ordered. Attorney Watkins argues in opposition to motion to re-open; Attorney Arndt makes a statement; whereupon, it is ordered that motion to re-open hearing be, and it is, denied, and exception noted to Movant du Bois.

Attorney Grant moves that Financial Statement of the Debtor as of June 30, 1938, and Petition of the Debtor for leave to pay Mortgage indebtedness filed July 31, 1938, be admitted in evidence on hearing on the Plan of Reorganization and there being no objection, it is so ordered.

[TITLE OF DISTRICT COURT AND CAUSE.]

Memorandum of Conclusions, Judge Hollzer's Calendar,
Aug. 8, 1938

It appearing that a plan of reorganization has been filed herein on behalf of the debtor corporation, to-wit, Consolidated Rock Products Company, and its wholly owned subsidiary corporations, to-wit, Union Rock Company and Consumers Rock & Gravel Company, that objections to said plan have been filed by E. S. Williams as the owner and holder of Union Rock Company bonds in the principal amount of \$7,000, also by E. Blois duBois as the owner and holder of Union Rock Company bonds in the principal amount of \$150,000, and of Consumers Rock & Gravel Company bonds in the principal amount of \$31,000, and also by Edward E. Hatch and Louis Van Gelder as members of the sub-committee of the stockholders' committee of preferred stockholders of Consolidated Rock Products Company and as preferred stockholders, also that the objections interposed by and on behalf of preferred stockholders have been abandoned and withdrawn, and that said proposed plan has been referred to a special master to hear the same and all matters in connection therewith, including any and all objections thereto other than as to its constitutionality, which latter question has been submitted directly to the court for its consideration and determination; and

It further appearing that a hearing with respect to said plan and all objections thereto, other than as to the question of constitutionality, has been had before said special master and that the latter has reported his findings and conclusions thereon, and particularly has found that

said plan is fair, just and equitable and has recommended that the same be confirmed; and

It further appearing that prior to the year 1929 several companies were engaged in the business of mining, processing, shipping and selling rock, sand and gravel in Southern California, that the companies doing the major portion of this kind of business were the two subsidiary corporations involved herein and another corporation operating under the name of Reliance Rock Company; and

It further appearing that in the early part of the year 1929 said Union Rock Company had outstanding first mortgage bonds in the principal amount of approximately \$2,400,000 par value and said Consumers Rock and Gravel Company had outstanding first mortgage bonds in the principal amount of approximately \$1,500,000 par value, also that said Reliance Rock Company became a subsidiary of said Union Rock Company through the ownership by the latter of all the stock of the former, that thereafter and in the year 1929 the debtor corporation was organized and acquired all of the outstanding capital stock of said Union Rock Company and all of the outstanding capital stock of said Consumers Rock and Gravel Company, that funds in the amount of approximately \$7,000,000 were obtained by the debtor corporation through the sale of its preferred and common stock to the general public, that said funds were used to purchase all of the above mentioned stock of its subsidiary companies and also to provide additional working capital, that thereafter and under date of July 15, 1929, a certain operating agreement was entered into between the debtor corporation and its wholly owned subsidiary companies, under the terms of which operating agreement all of said

wholly owned subsidiaries ceased all operating functions and the entire management, operation and financing of the business and properties of all of said subsidiary corporations were transferred to and assumed by the debtor corporation, that likewise all of the cash, securities, notes, bills and accounts receivable, book accounts, manufactured materials and materials in process, and also all contracts for the sale of materials of said subsidiaries, were transferred to the debtor corporation, also that although said subsidiary companies maintained their separate corporate entities, yet their assets were carried on the books of the debtor corporation as assets of the latter and the liabilities of the former were also carried on the books of the debtor corporation as its liabilities, that the debtor corporation assumed all of the functions not only of an operating company but also those of company ownership, that the directors of the debtor corporation selected the directors of all of its subsidiaries, that said operating agreement was executed by virtually the same individuals acting as officers, not only of the debtor corporation, but also of all of its subsidiaries, and that said operating agreement recited in part as follows:

"It is distinctly understood and agreed that this agreement is entered into for the mutual benefit of the parties hereto, that it is not made expressly or at all for the benefit of any third person as that term is used in Section 1559 of the Civil Code of the State of California, and that said parties hereto and their respective successors and assigns alone shall exercise and enjoy the rights and privileges hereof."

It further appearing that thereafter and under date of February 16, 1933, said aforementioned operating agree-

ment was modified by another operating agreement, that said amended operating agreement was executed by the same individuals acting as officers, not only of the debtor corporation, but also of all of its subsidiaries, that said amended operating agreement recites in part as follows:

"WHEREAS under said agreement it was provided that Operating Company was to be charged with depreciation, amortization, depletion and obsolescence, hereinafter referred to as "depreciation", on the properties of the Owing Companies, without setting forth the basis therefor, and whereas depreciation has been set up by the accountants based on the then book value of Owing Companies' properties, and

"WHEREAS it appears to Operating Company and Owing Companies that the depreciation on said basis was and is unfair, inequitable and actually not contemplated by the parties at the time the agreement was entered into, and

"WHEREAS said agreement contains no default provision and it is believed that one should be set forth, and

"WHEREAS, pursuant to said agreement it was provided that any party thereto could terminate said operating agreement as to its particular property upon thirty days' written notice of its intention so to do, and

"WHEREAS Operating Company is unwilling to proceed further under said operating agreement unless it is revised and changed both as to said depreciation and as to said termination, and

"WHEREAS it is deemed not only extremely desirable and advantageous to Owing Companies that said operating agreement continue, but is also deemed fair, and

equitable and in accordance with what should have been the original agreement of the parties hereto, that said depreciation be adjusted along the lines hereinafter set forth and that said agreement be for a fixed period terminable prior thereto only with the written consent of Operating Company and any two of Owning Companies, so that no one of Owning Companies nor Operating Company, can withdraw from said operating agreement and thereby actually destroy the purpose thereof, and

"WHEREAS Operating Company is willing as a part of the consideration for the execution of this agreement to forego and cancel its option to purchase the property of Owning Companies set forth in Section 12 of the above mentioned operating agreement, *****

2. That anything in said operating agreement contained to the contrary notwithstanding—and regardless of how said item may be absorbed or set up by the individual Owning Companies—the 'depreciation' to be credited to the 'Owning Companies' account by the Operating Company shall actually be credited only upon the termination of the agreement and that at said time it shall be arrived at upon the following basis: The Operating Company and each Owning Company shall within five days after such termination appoint one appraiser. Within five days thereafter the appraiser of the Operating Company with the appraiser from each respective Owning Company shall appoint a third appraiser. Within ninety days after the appraisers are so appointed, they shall as to the respective properties ascertain the amount of the depreciation which should be credited to the respective Owning Companies for the period of the agreement, starting April 1, 1929 and ending with

the date of termination. Such depreciation shall be based upon the appraised actual values of said properties, regardless of book values, starting April 1, 1929 and reappraised as of the first day of April of each year thereafter. The basis of depreciation shall also be determined by said appraisers in such report and shall be such basis as is usual and customary in said business—taking into consideration the use made thereof by Operating Company—and fair and equitable to the Operating Company and the respective Owning Companies. The figures so arrived at shall be the amount to be credited to the account of the Owning Companies respectively, and settlement between the Operating Company and the respective Owning Companies shall be made within ten days after the completion of said appraisal in accordance with the current account of the parties on said date.”

It further appearing that from 1929 to 1934 the debtor corporation paid in excess of \$1,000,000 in interest and for the retirement of bonds of said Union Rock Company, and paid in excess of \$700,000 in interest and for the retirement of bonds of said Consumers Rock and Gravel Company, that the amount of the present bonded indebtedness of said subsidiary corporations is as follows:

Union Company bonds outstanding	\$1,979,500
Union Bonds owned by Consolidated	102,500
Net Union bonds in the hands of the public	1,877,000
Consumers bonds outstanding	1,200,500
Consumers bonds owned by Consolidated	63,500
Net Consumers bonds in hands of the public	1,137,000

It further appearing that the first interest default on the Union Rock Company bonds occurred on March 1, 1934 ~~and~~ has continued to date, and that the first interest default on the Consumers Rock & Gravel Company bonds occurred on July 1, 1934 and has continued to date; and

It further appearing that betterments and additions have been made to the equipment and properties of said subsidiary companies by the debtor corporation and that there has been a very considerable commingling of funds, equipment and properties of the debtor corporation and its subsidiary companies all as described and found by the special master; and

It further appearing that there has been such a commingling of the assets and properties of said debtor corporation and its subsidiaries that a separate, independent appraisal of such assets and properties would hardly be feasible, that to attempt to make such appraisal would result in unnecessary and great delay and expense to all interested parties, and that it is extremely doubtful whether any substantial benefit would be derived by such appraisal; and

It further appearing, that although according to the entries appearing on the books of said debtor corporation the latter appears to be indebted to its said subsidiaries in a sum totaling approximately \$7,000,000, nevertheless said entries have been computed upon the basis of the terms and provisions of said original operating agreement and not upon the basis of the terms and provisions of said

amended operating agreement, that no computation to determine the amount of any indebtedness owing by said debtor corporation to its said subsidiaries has been made in conformity with the terms and provisions of said amended operating agreement, that to undertake to enforce the terms and provisions of said original operating agreement as the basis for determining the amount of any indebtedness owing by said debtor corporation to its subsidiaries, would result in protracted and very costly litigation and it is exceedingly doubtful whether such litigation would prove beneficial to any of the interested parties, particularly to the objecting bondholders; and

It further appearing that said proposed plan has been evolved and prepared under the conditions and in the manner described and found by the special master, that said plan has received the approval of more than the requisite percentage of all classes of creditors and stockholders, also that all interested parties, so far as they have made their views known to the court, are opposed to foreclosure and liquidation, that, so far as they have made their respective positions known to the court, all interested parties believe that a plan of reorganization which contemplates the continuance of the operation of all of the properties involved herein as one unit, under one management and ownership, offers the greatest assurance that the owners of the bonds of said subsidiary companies will be paid an amount approximately the par value of such bonds and further offers the greater probability of preserving for the stockholders a substantial equity after the

bondholders shall have been paid as provided in said plan; and

It further appearing that under the proposed plan of reorganization all of the assets of said debtor corporation and its subsidiaries are to be transferred to a new corporation and that the owners of said Union Rock Company bonds, instead of having their present bonds, secured by a lien against the tangible properties of said Union Rock Company, the identity of some of which properties it would be exceedingly difficult, if not impossible to ascertain, will receive bonds to be issued by such new company in an amount equalling one-half of the present par value thereof and secured by a lien against all of the combined tangible properties of said debtor corporation and all of its subsidiaries, and will also receive preferred stock to be issued by such new company in an amount equalling the remaining one-half of the present par value of said bonds, which preferred stock will have attached thereto warrants permitting the purchase of common stock of the new company under specified conditions, also that the owners of said Consumers Rock & Gravel Company bonds, instead of having their present bonds, secured by a lien against the tangible properties of said Consumers Rock & Gravel Company, the identity of some of which properties it would be exceedingly difficult, if not impossible to ascertain, will receive bonds to be issued by such new company in an amount equalling one-half of the present par value thereof and secured by a lien against all of the combined tangible

properties of said debtor corporation and all of its subsidiaries, and will also receive preferred stock to be issued by such new company in an amount equalling the remaining half of the present par value of said bonds, which preferred stock will have attached thereto warrants permitting the purchase of common stock of such new company under specified conditions; also that the owners of the outstanding preferred stock of said debtor corporation will receive in exchange for the same common stock to be issued by such new company, share for share, and that the owners of the outstanding common stock of said debtor corporation will receive in exchange for the same warrants to purchase stock to be issued by such new company at definite prices and under specified conditions; and

It further appearing that, even if the proposed plan of reorganization were materially modified so as to meet substantially the objections interposed herein, nevertheless the parties who have consented to the proposed plan and who have petitioned this court to approve the same would ultimately be able, under the laws of the State of California, through the creation of a series of corporations, and through the consolidation thereof, to procure the effectuation of the proposed plan of reorganization, that is to say, assuming that all of the assets of said Union Rock Company were to be transferred to a new corporation, also that all of the issued stock of such new corporation were to be issued to the holders of said Union Rock Company bonds, also assuming that all of the assets of

said Consumers Rock and Gravel Company were to be transferred to a second corporation, also that all of the issued stock of the second corporation were to be issued to the holders of said Consumers Rock and Gravel Company bonds; and assuming that for the purpose and in consideration of avoiding the prosecution of an appeal from an order approving a plan of reorganization which provided for the transfer of assets and the issuance of stock in the manner herein mentioned, and also for the further purpose and in consideration of avoiding litigation between the debtor corporation and its subsidiary companies and the stockholders of the debtor corporation, a third corporation were to be organized, to which third corporation all of the assets of the two new corporations and also all of the assets of the debtor corporation were to be transferred, upon terms and conditions providing for the issuance of bonds and stock exactly in accord with the issuance of securities as provided under the proposed plan of reorganization, such ultimate consolidation could be effected under the laws of the State of California even against the opposition of the parties herein objecting to the proposed plan of reorganization; and

It further appearing that, with the exception of said two objecting bondholders, all interested parties who have made their views known to the court are convinced that the proposed plan of reorganization is fair, equitable and feasible as to all parties affected thereby; and

It further appearing that the offer of the proposed plan of reorganization and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by the Bankruptcy Act;

THE COURT CONCLUDES that said proposed plan of reorganization is fair, just and equitable, that the same does not violate any provision of the Constitution of the United States, that the exceptions to the report of the special master should be denied and said report should be approved and that said plan of reorganization should be confirmed.

Counsel for the proponents of the plan of reorganization are requested to prepare and serve findings and decree in conformity with this memorandum.

See:

In the Matter of 620 Church St, etc. et al, 299 US 24

Warner Bros. Pictures, Inc. et al v. Lawton-Byrne-Bruner Ins. Agency Co. 79 F (2d) 804

In re Central Funding Corporation, 75 F (2d) 256

Campbell v. Alleghany Corporation, 75 F (2d) 947

In re Georgian Hotel Corporation, 82 F (2d) 917.

In re 333 North Michigan Ave. Bldg. Corp. 84 F (2d)

936

[Endorsed]: Filed R. S. Zimmerman, Clerk at 25 min past 10 o'clock Aug. 8, 1938 A. M. By M. J. Sommer Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

* * *

In the Matter of)	
)	
CONSOLIDATED ROCK PROD-)	
UCTS CO., a Delaware corporation,)	
)	
Debtor,	)	In Proceedings
	)	for the
UNION ROCK COMPANY, a	)	Reorganization
corporation,	)	of a
Subsidiary,	)	Corporation
)	
and	)	No. 25816-H
)	
CONSUMERS ROCK & GRAVEL)	
COMPANY, INC., a corporation,)	
)	
Subsidiary,)	

FINDINGS AND ORDER CONFIRMING PLAN
OF REORGANIZATION OF CONSOLIDATED
ROCK PRODUCTS CO., UNION ROCK COM-
PANY, AND CONSUMERS ROCK & GRAVEL
COMPANY, INC.

The Plan of Reorganization of Consolidated Rock Products Co., Union Rock Company, a Delaware corporation, and Consumers Rock & Gravel Company, Inc., a Delaware corporation, dated March 15, 1937 (hereinafter referred to as the "Plan"), came on for proposal, consideration and confirmation on November 1st, 1937 at 2:00 o'clock P. M., the time set for hearing thereon.

Within ten (10) days prior to said date objections to said Plan of Reorganization and the confirmation thereof had been filed by Edward E. Hatch and Louis Van Gelder as a subcommittee of the stockholders' committee of preferred stockholders; E. S. Williams as an owner of bonds of said Union Rock Company and E. Blois duBois as an owner of bonds of said Union Rock Company and the said Consumers Rock & Gravel Company, Inc. The objections of said E. S. Williams went to the constitutionality of the Plan. By order dated November 2, 1937, the petition for proposal, consideration and confirmation of said Plan of Reorganization and the objections to said Plan were referred to Frank P. Doherty as Special Master under instructions that starting November 8, 1937 he hear said petition of proponents of the Plan and all matters in connection therewith, including any and all objections to said Plan, other than as to its constitutionality, and make his findings and report with respect to all thereof. Under said order the objectors to the Plan and the proponents of the Plan were given a specified time within which to file briefs with the Court on the question of constitutionality. Hearings were conducted before said Special Master pursuant to said order of November 2, 1937, on November 8, 9, 10, 12, 15, 16 and 17, 1937. On December 21, 1937 the Court heard the arguments of all counsel present on the question of constitutionality of the Plan. The Special Master's findings and report were filed February 14, 1938. Said objector, E. Blois duBois, filed exceptions to said Special Master's findings and report on March 5, 1938. The hearing thereon was set for March 7, 1938 before this Court. On March 7, 1938 the Court heard arguments by all counsel present on the exceptions to the findings and report of the Special Master and at the conclusion of said arguments took the entire matter,

including the question of constitutionality of the Plan and the approval of the Special Master's findings and report, under submission. Under date of July 22, 1938 said objector, E. Blois duBois, filed a motion to reopen the hearing with respect to confirmation of the Plan. Hearing on said motion took place before this Court on August 5, 1938 at which time all counsel present were heard on said motion. At the conclusion of said arguments said motion was denied.

The Court and said Special Master having heard and examined the evidence, both oral and documentary, submitted by objectors and proponents, having examined all of the briefs filed in these proceedings, having heard arguments of all counsel who desired to be heard and being fully advised in the premises:

THE COURT HEREBY FINDS:

(1) WITH RESPECT TO THE HISTORY OF THE DEBTOR AND ITS SUBSIDIARIES:

(a) That Consolidated Rock Products Co., the debtor, was organized under the laws of the State of Delaware, on January 28, 1939; for the purpose of acquiring the issued and outstanding capital stock of the three major companies and their subsidiary and related companies engaged in the business of mining, processing, shipping and selling rock, sand and gravel in Southern California, said three companies being Union Rock Company, a Delaware corporation, Consumers Rock & Gravel Company, Inc., a Delaware corporation and Reliance Rock Company, a Delaware corporation.

(b) That said Union Rock Company and said Reliance Rock Company had prior to the formation of Consolidated

Rock Products Co. entered into a merger agreement which was in the process of completion.

(c) That Consolidated Rock Products Co. acquired, either directly or indirectly, with the exception of a few shares, all of the issued and outstanding capital stock of said three companies pursuant to a permit from the Division of Corporations of the State of California and in compliance with the Corporate Securities Act of said State.

(d) That the stock of said three companies was acquired by said Consolidated Rock Products Co. from underwriters consisting of various brokerage firms in and around Los Angeles to which it issued in exchange for said stock 280,000 shares of its preferred capital stock and approximately 396,000 shares of its common capital stock and that said underwriters in turn sold said stock of Consolidated Rock Products Co. to the public and thereby acquired the funds with which to pay for the stock of said three companies.

(e) That the sums so obtained from the public aggregated approximately \$7,000,000.00 and that in addition thereto Consolidated Rock Products Co. sold 20,000 shares of its preferred capital stock for the sum of \$500,000.00 in order to provide said corporation with working capital; that the total amount of stock issued by Consolidated Rock Products Co. for all purposes aggregated approximately 300,000 shares of preferred stock without par value, carrying liquidation preference of \$25.00 per share and a dividend rate of \$1.75 per share, and approximately 400,000 shares of common capital stock without par value and that the stock sold to the public was sold pursuant to a permit from the Division of Corporations of the State of California and in compliance with the Corporate Securities Act of said State, in units of two shares of said

preferred and one share of said common for \$58.00 per unit.

(f) That at the time of acquisition of the stock of said three companies by Consolidated Rock Products Co. said Union Rock Company had outstanding First Mortgage Serial and Sinking Fund Gold Bonds in the amount of approximately \$2,400,000.00 and Consumers Rock & Gravel Company, Inc. had First Mortgage Sinking Fund Gold Bonds outstanding in the amount of approximately \$1,500,000.00, there being no bonded indebtedness against the properties of said Reliance Rock Company.

(g) That said First Mortgage Bonds were unaffected by the aforesaid acquisition of stock and remained first liens against the properties described in the respective indentures.

(h) That at the time of the acquisition of the stock of said three companies by said Consolidated Rock Products Co. said three companies did over seventy-five per cent of the rock, sand and gravel business in Southern California, these companies having fee and leased rock, gravel and sand deposits as well as plants and bunkers located at strategic points from Santa Barbara County on the north to San Diego County on the south and as far east as San Bernardino and that said three companies at that time owned in excess of 2,000 acres of deposits in fee, leased approximately 3,000 acres and operated as their own some 200 motor trucks adapted to this particular type of business.

(i) That at the time of the acquisition of the stock of said three companies there was a vast market for their products; these properties were appraised by the J. G. White Engineering Corporation of New York in the spring of 1928 at approximately \$15,000,000.00, thus, with sub-

sequently acquired properties, bringing under one control properties of an appraised value at the time of acquisition, in excess of \$16,000,000.00 and that under the consolidation with resulting economies of operation and production and the elimination of duplicated facilities, estimated earnings showed an annual profit of \$500,000.00 a year after payment of all charges, including bond interest and preferred dividends.

(j) That shortly after the acquisition of the stock of said three companies by Consolidated Rock Products Co. and while it directly or indirectly owned and controlled all of the issued and outstanding stock of each of them and designated their respective Boards of Directors and officers, it entered into what was termed an operating agreement with these three wholly owned subsidiaries; that said operating agreement was dated July 15, 1929 but effective as of April 1, 1929; that under said agreement said three companies ceased all operating functions and the entire management and operation and financing of the business and properties of the three companies were undertaken by Consolidated Rock Products Co.; that under said agreement all cash, securities, notes, bills and accounts receivable, book accounts, manufactured materials and materials in process, as well as contracts for the sale of materials of said companies, were to be transferred to Consolidated Rock Products Co.; that in the balance sheets of Consolidated Rock Products Co., after the execution of said agreement, separate balance sheets were kept for said subsidiaries but said Consolidated Rock Products Co. showed on its consolidated balance sheet the profits and loss from the operations of the three companies and Consolidated Rock Products Co. as a unit and therein set up accountings between the parent and its subsidiary com-

panies in accordance with the provisions of said agreement basing depreciation, depletion and amortization on the original valuations given the assets at the time of the acquisition of the stock of said three companies and that said operating agreement contained the express provision that it was not made for the benefit of any third person, parties to the agreement alone being permitted to exercise and enjoy the rights and privileges thereof.

(k) That under date of February 16, 1933 Consolidated Rock Products Co. entered into a further agreement with its said subsidiaries modifying said operating agreement dated July 15, 1929, materially altering the depreciation item, it apparently being the purpose of this modifying agreement to have the depreciation calculated on a basis consistent with then existing values, preserve the separate corporate entities for purposes of accounting and income tax and in order not to violate provisions of the trust indentures securing the bond issues of said Union Rock Company and said Consumers Rock & Gravel Company, Inc.

(l) That when Consolidated Rock Products Co. acquired the stock of said three companies said Union Rock Company owned in fee more than twice as much acreage as did Consumers Rock & Gravel Company, Inc. and in addition thereto had a large number of well located distributing bunkers, most of which were owned in fee; that almost immediately after Consolidated Rock Products Co. acquired the stock of said three companies the 1929 depression started; that building activity went to extremely low levels; that the volume of business and prices for products were such that the Company was un-

able to operate its properties at a profit; that competing companies entered the field with the result that from transacting approximately seventy-five per cent of the total business in Southern California, Consolidated Rock Products Co. gradually was able to obtain little more than one-third of the total tonnage in its market; that as a result of curtailed production the management of the Company deemed it advisable to operate leased properties rather than fee properties where both were in the same marketing area because the leased properties called for minimum rents and royalties whether the plants on these properties were operated or not; that as a result, in the main, of this factor the plants of said Consumers Rock & Gravel Company, Inc. (it having the greatest number of plants on leased properties) were operated and many of the Union Rock Company plants (most of which were located on fee property) were permitted to lie idle and that as a result of this operating procedure the plants of Consumers Rock & Gravel Company, Inc. were better maintained and, during recent years, produced the most tonnage and consequently, the major portion of the total gross income.

(2) WITH RESPECT TO THE VALUE OF THE PROPERTIES OF THE DEBTOR AND ITS SUBSIDIARIES AND THE APPRAISAL THEREOF:

(a) That as of the early part of 1929, based principally on the appraisal of the J. G. White Engineering Corporation of New York, the properties had a value in excess of \$16,000,000.00.

(b) That as of May 1, 1931 because of the disastrous depression resulting in the tremendous drop in available business, Consolidated Rock Products Co. had its properties and those of its subsidiaries reappraised by W. P. Jeffries and Carl Wittenberg, a director and officer of the corporation, respectively; that under their appraisal, referred to in the records of the debtor as the Jeffries-Wittenberg Appraisal, the assets of the debtor and its subsidiaries, exclusive of going concern, good will and current assets, were appraised at \$4,414,425.00.

(c) That at the hearing before the Special Master the valuation of tangible assets of the three companies, testified to by Robert Mitchell and Frank Gautier, who had had wide experience covering a period of approximately fifteen years in the rock, sand and gravel business and who were thoroughly acquainted with the assets owned by all of the companies, were substantially the same, though they differed as to details, being approximately \$4,300,000.00.

(d) That according to the appraisal of Thomas C. Rogers who is now a competitor and has been in the rock, sand and gravel business for more than fifteen years and was one of the original owners of said Union Rock Company, the value of the assets of said three subsidiaries operated as a unit is approximately \$3,300,000.00 and that he did not testify as to the value of the assets owned by Consolidated Rock Products Co. or the value of its good will.

(3). WITH RESPECT TO TREATMENT OF THE HOLDERS OF THE PREFERRED AND COMMON CAPITAL STOCK OF CONSOLIDATED ROCK PRODUCTS CO. AND THE FIRST MORTGAGE BONDS OF SAID UNION ROCK COMPANY AND SAID CONSUMERS ROCK & GRAVEL COMPANY, INC., SINCE MARCH 1, 1929:

(a) That no dividends of any kind have ever been declared or paid on any of the common capital stock of said Consolidated Rock Products Co.

(b) That with the exception of five quarterly dividends no dividends have ever been declared or paid on the preferred stock of said Consolidated Rock Products Co.

(c) That at the time of the acquisition of the stock of said Union Rock Company and said Consumers Rock & Gravel Company, Inc. by Consolidated Rock Products Co. there were outstanding against the properties of said two subsidiaries first mortgage bonds as follows: Union Rock Company approximately \$2,400,000.00 par value, Consumers Rock & Gravel Company, Inc. approximately \$1,500,000.00 par value, and that said first mortgage bonds bore interest at the rate of six per cent (6%) per annum, payable semiannually.

(d) That as of May 24, 1935 when the debtors' petitions were originally approved said Consolidated Rock Products Co. had retired first mortgage bonds of Union Rock Company of the par value of \$443,500.00 and first mortgage bonds of said Consumers Rock & Gravel Company, Inc. of the par value of \$299,500.00; that as of said date there were outstanding (1) \$1,979,500.00 of said Union bonds, \$102,500.00 of which were owned by Consolidated Rock Products Co., leaving \$1,877,000.00 in principal amount thereof in the hands of the public and

(II) \$1,200,500.00 in principal amount of said Consumers bonds, \$63,500.00 par value of which were owned by Consolidated Rock Products Co. leaving \$1,137,000.00 par value thereof in the hands of the public.

(e) That the first interest default on said Union bonds was March 1, 1934 and has continued to date; that the first default on the serial maturities of the said Union bonds was September 1, 1933, and has continued to date; that the first interest default on said Consumers bonds was July 1, 1934, and has continued to date; that the first default in the sinking fund payments on said Consumers bonds was July 1, 1934 and has continued to date and that as of April 1, 1937, the date from which interest will accrue on the new bonds to be issued under the Plan, the delinquent interest on the said Union and the said Consumers bonds held by the public aggregated \$405,561.67 and \$221,715.00, respectively.

(4) WITH RESPECT TO THE PRESENT PHYSICAL SITUATION OF THE PROPERTIES OF CONSOLIDATED ROCK PRODUCTS CO. AND ITS SUBSIDIARIES:

(a) That since the early part of 1929, and as originally contemplated and as permitted in said operating agreement, all of the business and properties of the debtor and its subsidiaries have been operated, handled and used as though there had been an actual consolidation of all thereof under one ownership.

(b) That as a result of said unified operation it would be physically impossible to determine and segregate with any degree of accuracy or fairness properties which originally belonged to the companies separately; that in many instances plants, trucks and other equipment consisting

of machinery and parts originally belonging to the companies separately are now physically joined together as a piece of operating equipment; that trucks and other equipment originally belonging to one of the companies have been traded in on new equipment now owned by Consolidated Rock Products Co. and that cash, accounts receivable and materials of every character and description have been commingled and are now in the main held by Consolidated without any way of ascertaining what part, if any thereof, belongs to each or any of the companies separately.

(5) WITH RESPECT TO FLUCTUATION OF EARNINGS:

(a) That the success of this type of business depends not only upon tonnage sold but also upon prices received and that there have been repeated price wars in the industry and that while the volume of available business is a very important factor the price at which the commodities are sold is of equal importance and is variable and subject to decided fluctuation.

(6) WITH RESPECT TO THE CONSOLIDATED OPERATING PROFIT (BEFORE BOND INTEREST, DEPRECIATION, DEPLETION, AMORTIZATION, ETC.) JUST PRIOR TO AND DURING THE PENDENCY OF THESE PROCEEDINGS:

(a) That for the year 1934 the tonnage was 874,334.9 with an operating profit of \$21,420.90.

(b) That for the year 1935 the tonnage was 1,111,617.34 with an operating profit of \$49,092.51.

(c) That for the year 1936 the tonnage was 2,300,258.97 with an operating profit of \$201,632.29.

(d) That for the year 1937, the tonnage was 2,630,727 with an operating profit of \$291,480.99.

(e) That for the first six months of the year 1938 the tonnage was 1,243,763 with an operating profit of \$195,660.77.

(f) That certain economies of operation which have resulted from these proceedings and will result from the reorganization have aided and will continue to aid in a larger operating profit and that the showing for the first six months of 1938 in no way forecasts continued profit to that extent in the future, it being clearly demonstrated by the records of the debtor and its subsidiaries in the past that the price of its commodities has fluctuated from time to time and has not been maintained at high levels over any extended period of time.

(7) WITH RESPECT TO THE EVOLVEMENT OF THE PLAN OF REORGANIZATION:

(a) That after the debtor and its subsidiaries filed their petitions herein the representatives of the bondholders of said Union Rock Company and said Consumers Rock & Gravel Company, Inc. and the representatives of the stockholders of Consolidated Rock Products Co. formed themselves into committees and groups, each acting independently of the other and each claiming that its group should be most favorably treated.

(b) That it was the contention of the representatives of the said Union Rock Company bondholders that the properties of the said Union Rock Company were the most valuable and desirable and that it owned the largest acreage in fee simple, as well as the largest number of bunkers located strategically.

(c) That it was the contention of the representatives of the Consumers Rock & Gravel Company, Inc. bondholders that said Consumers Rock & Gravel Company, Inc. properties had contributed the major portion of total gross income; were in much better operating condition and that it was to their advantage to have the properties of said Consumers Rock & Gravel Company, Inc. segregated from those of the other companies.

(d) That is was the contention of the Consolidated Rock Products Co. stockholders' representatives that the stockholders had contributed some \$7,000,000.00 to the enterprise; that because of the consolidation the bondholders received interest and sinking fund payments for a much longer period than they otherwise would have done and that Consolidated Rock Products Co. had unencumbered assets and good will to a value in excess of \$1,000,000.00.

(e) That negotiations with respect to Plans of Reorganization proceeded at frequent intervals over a period of approximately three years during which time considerable bitterness developed between the disagreeing and adverse groups and that these disagreements resulted in the development of several different Plans of Reorganization.

(f) That after threats of litigation which might destroy the remaining value to all of the security holders and efforts on the part of all three of the warring factions to compromise as far as possible, the present Plan of Reorganization was evolved.

(g) That at the hearing before the Special Master all parties with the exception of witness Rogers testified that they favored continued operation as a unit.

(8) WITH RESPECT TO THE SOLVENCY OF CONSOLIDATED ROCK PRODUCTS CO. AND ITS SUBSIDIARIES, SAID UNION ROCK COMPANY AND SAID CONSUMERS ROCK & GRAVEL COMPANY, INC.:

(a) That the present fair value of all of the assets of all of said companies, including "going concern" and "good will" value, are insufficient and inadequate to pay the face value of the said first mortgage bonds plus all accrued interest and the liquidation preferences upon the preferred capital stock of Consolidated Rock Products Co., including accrued dividends thereon.

(b) That the present fair value of all of the assets admittedly subject to the Trust Indenture securing said first mortgage bonds of said Union Rock Company is insufficient to pay the par value of the bonds, plus accrued interest, as provided by said Trust Indentures.

(c) That the present fair value of all of the assets admittedly subject to the Trust Indenture securing said first mortgage bonds of said Consumers Rock & Gravel Company, Inc. is insufficient to pay the par value of the bonds, plus accrued interest, as provided by the Trust Indentures.

(d) That the present fair value of all of the assets of all of said companies, exclusive of "going concern" and "good will" value, if operated as a unit, is in excess of the total bonded indebtedness, plus accrued and unpaid interest thereon up to April 1, 1937, the date of the new bonds to be issued under the Plan of Reorganization.

(9) WITH RESPECT TO THE OBJECTIONS:

(a) Of Edward E. Hatch and Louis Van Gelder as a subcommittee of the stockholders' committee of preferred stockholders:

A. That said objections have heretofore been withdrawn.

(b) Of E. S. Williams:

A. That the objections to the constitutionality of the Plan and to constitutionality of said Section 77-B, insofar as said Section 77-B authorizes a Plan such as the Plan here involved, are without merit and that the Plan is constitutional in all respects.

(c) Of E. Blois duBois:

A. That said objector is the owner of \$150,000.00 par value of said Union Rock Company bonds and \$31,500.00 par value of Consumers Rock & Gravel Company, Inc. bonds.

B. That of the \$150,000.00 par value of said Union Rock Company bonds owned by said objector \$72,000.00 were acquired between September 20, 1934 and May 8, 1935 and \$78,000.00 between June 5, 1935 and December 9, 1935 and that the Consumers Rock & Gravel Company, Inc. bonds owned by said objector were acquired between July 1, 1934 and April 17, 1935.

C. That the said Union Rock Company bonds owned by said objector were acquired at an average cost of \$145.00 per \$1000.00 of par value and the said Consumers Rock & Gravel Company, Inc. bonds at an average cost of \$210.00 per \$1000.00 of par value.

D. That the objection to the giving of the stockholders of Consolidated Rock Products Co. participation in the Plan is without merit for the reasons in this order found and particularly because:

I. The value of the assets of the debtor and its subsidiaries is in excess of the principal and accrued interest due to all bondholders and, therefore, the stockholders have an equity;

II. Any alleged liability under the operating agreement was not made for the benefit of any third parties and the bondholders are included in that category;

III. The unmortgaged assets of the debtor which are to be turned over to the new corporation and which are to be subject to the proposed new indenture, constitute a valuable contribution to the new corporation.

E. That the objection that the bondholders are to receive new bonds only to the extent of one-half of the principal of their present bonds is without merit because:

I. The present debt structure of the debtor and its subsidiaries is top-heavy and its continuance would subject the debtor to continuing defaults under the trust indenture and embarrass the proposed new company in obtaining necessary banking and trade credit;

II. The issuance of preferred stock for the other one-half, having a liquidation preference equal to one-half of the present bond principal, will preserve the relative priority of the bondholders present position.

F. That the objection that the Plan fails to provide for the discharge or for recognition of the interest, accrued and unpaid, on the present bonds, and the objection that the common stock purchase warrants be attached to the new preferred stock which is to go to the bondholders

does not compensate them for loss of the accrued interest of their present bonds are without merit for the reasons in this order found and particularly because:

I. Consolidated Rock Products Co. is agreeing to cancel approximately \$165,000.00 in principal amount of present bonds owned by it;

II. Consolidated Rock Products Co.'s tangible assets having a present value of approximately \$500,000.00 and which are not subject to the lien of the present indentures will be subject to the lien of the indenture securing the new bonds and the security of the new bondholders will be increased to this extent;

III. The preferred stock which the new bondholders are to receive will carry warrants entitling the holders to purchase common stock of the new company for a period of five (5) years, thus giving bondholders an option to acquire a portion of whatever equity may develop in the properties;

IV. Even if the bondholders had immediately foreclosed and owned the properties since the first default there would have been no earnings from which to pay this accrued interest.

G. That the objection that the Plan provides that unsecured creditors will have their claims assumed by the new company and thus, in effect, prefer such creditors to the present bondholders is without merit because:

I. Neither said Union Rock Company nor said Consumers Rock & Gravel Company, Inc. has any unsecured creditors;

II. Consolidated Rock Products Co. has no unsecured creditors except current trade accounts incurred during the course of the reorganization proceeding; and

III. It is essential to the continuance of the business that the current trade accounts be paid currently and be unaffected by the Plan.

H. That the objection that the rights of minority bondholders may be prejudiced by the provision in the Plan that the indenture to secure the new bonds will provide that it may be amended with the consent of seventy-five per cent (75%) of the new bonds is without merit because:

I. Any such amendment would also require the consent of the Trustee under the new indenture;

II. This provision for the amendment of bond indentures is customarily inserted in order to permit modification if necessary without the expense of a formal reorganization proceeding;

III. It is a provision which has been consistently approved by the California Corporation Commissioner; and

IV. Under Section 77-B of the Bankruptcy Act of 1898, as amended, the rights of bondholders are always subject to modification with the consent of sixty-six and two-thirds per cent ($66\frac{2}{3}\%$) of the bondholders and the approval of the Court.

I. That the objection that the common stockholders of Consolidated Rock Products Co. are offered the right to subscribe to new common stock at a price lower than that offered to the new bondholders under the common stock purchase warrants to be attached to the preferred stock is without merit because:

1. Said common stockholders have a right only for a period of three (3) months to purchase one (1) share of the new common stock at \$1.00 per share for each five (5) shares of their present common stock;

II. Expense and delay of litigation may be avoided by giving the present common stockholders some participation in the Plan;

III. Such subscription right if made attractive may provide a means for raising new capital for the new company without prejudicing the prior position of the bondholders and the preferred stockholders;

IV. The warrants of the new bondholders extend for a period of five (5) years and the warrants going to the new bondholders are in addition to the new bonds and the new preferred stock while the subscription rights given to the present common stockholders are in lieu of any other rights which they may have or claim to have.

J. That the objection that the Plan appears to allocate all net income of the new company to the servicing of the new bonds and new preferred stock, but yet actually permits the use of net income for general corporate purposes prior to such servicing is without merit because:

I. The properties involved constitute an industrial enterprise with varying needs for capital outlays; the business of the new company is one of a decidedly fluctuating character and some latitude must be given to keep the new company with adequate working capital rather than to have all of such funds used for servicing the new bonds and the new preferred stock; and

II. The interests of the new bondholders are safeguarded in that any diversion of net income from the servicing of the new bonds and preferred stock requires the vote of a majority of the directors of the new company to be selected by the present bondholders.

K. That the objection that Article XI of the Plan contemplates placing the present bondholders in a junior

position by providing that the new company may raise money through a loan to be secured by a lien superior to the new bond indenture is without merit because:

I. The Plan provides that any such loan can be made only with the approval of the Court and is limited to \$150,000.00;

II. It can be secured by a prior lien only on the present assets of Consolidated Rock Products Co. and they are not subject to the present indentures; and

III. It is impossible to estimate the expense of re-organization or the capital needs of the new company and this method of providing for such needs is advisable.

L. That the objection that Section 2 of Article VI of the Plan permits the said Union Bondholders' Committee and the said Consumers Bondholders' Committee to authorize liens prior to those offered to the new bondholders is without merit because:

I. There may be some unforeseen and trivial matter which affects title to some of the properties and which could not be approved were it not for this provision; and

II. The said bondholders' committees would not—and probably could not—approve anything which would substantially impair the security of the new bonds.

M. That the objection that the definition of "net income" in the Plan is unfair in permitting the deduction from gross income of expenses of alterations, improvements and additions prior to the application of income to servicing the new bonds and the new preferred stock, and in permitting the directors to deduct from gross income such amounts as they deem necessary to maintain adequate working capital is without merit for the reasons hereinbefore set forth in Subdivision J of this Paragraph (9)

(c) and because if the bondholders had foreclosed and were operating the properties, their interests would be subject to the same discretionary power of their representatives in the conduct of the business.

N. The objection that Section 7 of Article VI of the Plan leaves to the discretion of the board of the new company the determination of what constitutes "available net income" for application to the new bonds and new preferred stock is without merit for the reasons set forth in Subdivision J and M of this Paragraph (9)(c).

O. That the objection that the events of default under the new bond indenture (Section 10 of Article VI of the Plan) are unduly lenient to the new company is without merit for the reasons in this order found and particularly because:

I. The present stockholders of Consolidated Rock Products Co. were unwilling to subject the Consolidated Rock Products Co's. assets to the new bond indenture unless the default provisions were lenient;

II. The new bondholders will receive all of the available net income as provided in the Plan;

III. If the minimum interest payments described in Article VIII of the Plan are not made, the voting control of the new company will become vested in the new preferred stockholders and they will thus have substantially all the advantages which they would have in the event of foreclosure—this provision with respect to change of control being more favorable to the bondholders than the provision concerning defaults;

IV. On reorganization bond issues it is the policy of the California Corporation Commissioner to favor lenient

default, provisions in order to avoid the necessity of subsequent reorganizations.

P. That the objection that Section 11 of Article VI of the Plan permits proceeds from sales or condemnation of property to be diverted to other than bond retirements without merit for the same reasons as are hereinabove set forth in Subdivision J of this Paragraph (9)(c).

Q. That the objection that the voting trust agreements referred to in Article IX of the Plan insure control of the new corporation in the hands of the same management which is responsible for the present condition of the companies is without merit because:

I. The voting trusts referred to by the objector apply only to the new preferred stock which goes to the present Union and Consumers bondholders who obviously do not control the management of the present company; and

II. The voting trust provision is made optional so that any bondholder who does not wish to subject his new preferred stock to a voting trust need not do so.

R. That the objection that no provision is made by which Consolidated Rock Products Co. shall contribute to the new company any excess indebtedness over and above the principal amount of the present bonds of said Union and said Consumers is without merit for the reasons in this order found and particularly because:

I. Consolidated Rock Products Co. has never assumed the said bonds;

II. Even though the bonds had been assumed by the Consolidated Rock Products Co. the bondholders would not be entitled to more than their principal and interest,

and the value of the present assets of all the companies, including good will, is in excess thereof; and

III. Under the Plan all of the assets of all the companies, including those of Consolidated Rock Products Co., are to be subjected to the lien of the new indenture, and thus the present bondholders will obtain the benefit of all of the assets which they could have obtained by foreclosure, assuming that all of such assets were subject to the lien or claim under the two present bond indentures.

S. That the objection that Section 11 of Article VI of the Plan will permit the new corporation to purchase its bonds in the open market with income which should be applied to the discharge of the bonded debt is without merit because:

I. Such purchase of bonds in the open market will result in the discharge of the debt represented by the bonds so purchased.

II. Such purchase of bonds in the open market would necessarily be at prices less than the redemption price and thereby retire a larger amount of debt than would be done by redemption; and

III. Such a provision is customary even in original issues of bonds, a similar provision being in the two existing indentures herein involved.

T. That the objection that the division of income of the new company in equal portions between the bondholders of said Union Rock Company and said Consumers Rock & Gravel Company, Inc. is unfair to said Union bondholders in that it is not proportionate to the ratio of

the outstanding Union and Consumers bonds is without merit for the reasons in this order found and particularly because:

I. This provision is the result of a compromise of a highly disputed point between the committees representing the said bond issues;

II. The said Consumers properties had been contributing the major portion of the gross income of the consolidated companies and are generally in better operating condition; and

III. The application of the proceeds of the sale of nonoperating properties of all the companies to the retirement of bonds and preferred stock having the lower market value, as provided in the Plan, will tend to equalize the two series of new bonds and new preferred stock to a point where the number outstanding or the market value thereof is approximately the same.

U. That the objection that no independent appraisal has been made is without merit for the reasons found in this order and particularly because:

J. There has been such a commingling of the assets and properties, including the funds from the sale of stock of Consolidated Rock Products Co., that an appraisal would be of no value to the Court and would be of such an indefinite and unsatisfactory nature as to produce further confusion.

II. A separate independent appraisal would result in unnecessary and great delay and expense to all parties and its benefits would be highly problematical;

III. The appraisal of the properties under the Jeffries-Wittenberg Appraisal; by Robert Mitchell; by Frank

Gautier and by Thomas C. Rogers, each independent of the other, show the valuations substantially the same though arrived at on different bases.

IV. There is no evidence that the Plan of Reorganization has dealt unfairly or inequitably with any of the security holders.

V. It maintains the relative priorities as between bondholders and stockholders and due to the long period of negotiations it is probable that the interested parties would disagree and litigate if there was any substantial change from the present Plan.

V. That the objections to the constitutionality of the Plan and to the constitutionality of said Section 77-B, insofar as said Section 77-B authorizes a Plan such as the Plan here involved, are without merit and that the Plan is constitutional in all respects.

(d) That there were no objections to the Plan filed by any interested party or parties except by said Hatch and Van Gelder; said Williams and said duBois.

(10) WITH RESPECT TO THE PROPOSAL OF THE PLAN OF REORGANIZATION:

(a) That the said Plan of Reorganization dated March 15, 1937 has been duly proposed in the manner prescribed in subdivision (d) of Section 77-B of the Bankruptcy Act of the United States, as amended (hereinafter called 77-B) and a copy of said Plan has been duly filed herein.

(11) WITH RESPECT TO NOTICES CONCERNING THE PLAN AND ITS CONSIDERATION:

(a) That all notices of the hearing of November 1, 1937, as required by the order in this proceeding dated October 1, 1937, were duly served, mailed and published within the requisite time and in the requisite form as more particularly appears from the affidavits with respect thereto on file herein.

(b) That all notices of the hearing of November 7, 1937 and subsequent dates before the Special Master, as required by the order in this proceeding dated November 2, 1937, were duly served, mailed and published within the requisite time and in the requisite form as more particularly appears from the affidavits with respect thereto on file herein.

(c) That all notices of the filing of the Special Master's findings and report and of the hearing on approval thereof on March 7, 1938, were duly served, mailed and published within the requisite time and in the requisite form as more particularly appears from the affidavits with respect thereto on file herein.

(12) WITH RESPECT TO THE FILING OF SCHEDULES:

(a) That pursuant to the orders of Court entered herein the debtor and its said subsidiaries have filed herein such schedules and have submitted herein such other information as is necessary to disclose the conduct of the debtor's and its subsidiaries' affairs and the fairness of the Plan.

(13) WITH RESPECT TO THE CLASSIFICATION OF CREDITORS AND STOCKHOLDERS OF THE DEBTOR AND ITS SUBSIDIARIES:

(a) That by order of this Court heretofore entered herein the Court has fixed and determined the reasonable time within which the claims and interests of creditors and stockholders might be filed or evidenced and allowed and for the purpose of the Plan and its acceptance the creditors and stockholders of the debtor and its subsidiaries are divided into the following classes according to the nature of their respective claims and interests:

A. Consolidated Rock Products Co.

I. Holders of 285,947 shares of preferred stock, without par value;

II. Holders of 397,455 shares of common stock, without par value;

B. Union Rock Company

I. Holders of \$1,979,500.00 principal amount of First Mortgage Serial and Sinking Fund Gold Bonds;

II. 160,000 shares of Class "A" capital stock;

III. 400,000 shares of Class "B" capital stock;

C. Consumers Rock & Gravel Company, Inc.

I. Holders of \$1,200,500.00 principal amount of First Mortgage Sinking Fund Gold Bonds;

II. Holders of 120,328 shares of common capital stock.

(b) That reasonable notice of the order in subdivision (a) hereof mentioned has been given to creditors and stockholders by publication and otherwise, all in accordance with the provisions of said order.

(14) WITH RESPECT TO ACCEPTANCE OF THE PLAN:

(a) That the Plan has been accepted in writing and acceptances thereof have been duly filed in these proceedings, all in accordance with the provisions of subdivision (e), clause 1 of Section 77-B, by or on behalf of creditors of the debtor and its subsidiaries holding more than two-thirds in amount of the claims of each class whose claims have been allowed and will be affected by the Plan, namely, claims of the holders of First Mortgage Serial and Sinking Fund Gold Bonds of said Union Rock Company, and holders of First Mortgage Sinking Fund Gold Bonds of said Consumers Rock & Gravel Company, Inc., and by and on behalf of the stockholders of the debtor and its subsidiaries of each class holding more than a majority of the stock of such class.

(b) That the Plan makes provision for the payment of all current creditors and all claims of the United States of America, if any, in cash, in full.

(c) That with such acceptances statements were filed by the debtor and its subsidiaries, verified in the manner required by this Court, setting forth what contracts of the debtor were executory in whole or in part and what unexpired leases had been rejected and surrendered.

(d) That by order of the Court entered herein, the Court being satisfied that by reason of the number of securities outstanding and the extent of public dealing therein, the preparation of such a statement would be impractical, debtor and its subsidiaries were directed that they need not file a statement showing what, if any, claims and shares of stock had been purchased or transferred by those accepting the Plan after the commencement or in contemplation of the proceedings.

THE COURT IS SATISFIED:

(1) That the Plan is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders of the debtor and its subsidiaries, and is feasible.

(2) That the Plan complies with the provisions of subdivision (b) of Section 77-E of the Bankruptcy Act of 1898, as amended.

(3) That the Plan has been accepted as required by the provisions of subdivision (e), clause (1) of said Section 77-B.

(4) That neither the debtor nor either of its subsidiaries is a utility subject to the jurisdiction of any regulatory commission or commissions, or other regulatory authority or authorities created by the laws of the State in which its properties are operated.

(5) That all amounts to be paid by the debtor or its said subsidiaries or by any corporation acquiring the assets of the debtor or its subsidiaries, and all amounts to be paid to committees or reorganization managers, whether or not by the debtor or its said subsidiaries or any such corporation, for services or expenses incident to the reorganization, have been fully disclosed and are reasonable or are subject to the approval of the Judge upon a showing to be hereafter made.

(6) That the offer of said Plan and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by said Bankruptcy Act.

(7) That the new corporation referred to in the Plan will be authorized by its charter or by applicable state or federal laws, on confirmation of the Plan, to take all action necessary to carry out the Plan.

The Court being satisfied in the premises.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

(1) That the petitions filed herein by the debtor and its subsidiaries on May 24, 1935 were filed in good faith and contained statements of all matters required to be stated in such petitions and that the debtor and its subsidiaries are entitled to the relief therein prayed for and that this Court has exclusive jurisdiction of the debtor and its subsidiaries and the properties of each of them.

(2) That the findings and report of the Special Master dated February 11, 1938 and filed herein February 14, 1938 are hereby confirmed and approved in all particulars.

(3) That other than Consolidated Rock Products Co. as the owner of the stock of said subsidiaries, the only creditors and stockholders of debtor whose interests will be affected by the Plan and the only claims or interests which shall be allowed as claims or interests adversely affected by the Plan are as follows:

* (a) Holders of 285,947 shares of preferred stock, without par value, of Consolidated Rock Products Co.

(b) Holders of 397,455 shares of common stock of Consolidated Rock Products Co., without par value.

(c) Holders of \$1,979,500.00 principal amount, of First Mortgage Serial and Sinking Fund Gold Bonds of said Union Rock Company.

(d) Holders of \$1,200,500.00 principal amount, of First Mortgage Sinking Fund Gold Bonds of said Consumers Rock and Gravel Company, Inc.

(4) That the acceptances of the Plan filed in this proceeding by or on behalf of each class of creditors and stockholders of the debtor and its subsidiaries are in the

requisite amounts and the manner of accepting the Plan by all those who have filed acceptances thereof in this proceeding are hereby approved.

(5) That the Plan is fair and equitable and does not discriminate unfairly against any class of creditors or stockholders and is feasible.

(6) That the Plan is hereby in all respects approved and confirmed, subject only to a further showing to be hereafter made to the Court as to the compliance of the new corporation contemplated by the Plan with such applicable laws and regulations as are necessary in order for it to issue its securities and carry out the provisions of the Plan, and that the provisions thereof and of this order shall be binding upon

(a) the Debtor

(b) the Debtor's subsidiaries

(c) all stockholders of the debtor and its subsidiaries, including those who have not, as well as those who have accepted the Plan, and

(d) all creditors of the Debtor and its said subsidiaries, secured or unsecured, whether or not affected by the Plan and whether or not their claims shall have been filed, and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted the Plan

(7) That the debtor and its subsidiaries and the corporation organized for the purpose of carrying out the Plan shall have full power and authority to, and shall put into effect and carry out the Plan and all orders of this Court relative thereto under and subject to the supervision and control of the Court, and take all steps which may be necessary or proper in that connection, whether or not herein specifically authorized.

(8) That every issuance, transfer or exchange of securities by this order directed or provided for in the Plan or necessary to be made to carry out the Plan and this order, are all to make effective, and such securities are to be issued, transferred and exchanged pursuant to, the Plan by this order confirmed, under and in accordance with the provisions of said Section 77-B within the meaning of subdivision (f) and subdivision (h) of this Section.

(9) That all questions, issues, matters and things not hereby disposed of (including all matters relating to compensation for services rendered and reimbursement for actual and necessary expenses incurred in connection with the Plan by parties in interest, creditors and their representatives, attorneys and agents), and the enforcement of the obligations of the new corporation required to be assumed by it pursuant to the Plan and this order, are hereby reserved by the Court, to the extent not heretofore disposed of, for its future determination, and that any party to this cause, any person who has appeared herein, or the new corporation, may at any time apply to the Court for the enforcement of this order and for further relief, with respect to matters not herein or hereinbefore specifically provided for, and for such purposes the Court hereby reserves jurisdiction of the new corporation and said mortgaged properties to be transferred to it.

(10) That the debtor and its said subsidiaries, and all creditors and stockholders of and claimants against each of them and their property, and all persons claiming under the debtor and its said subsidiaries, or such creditors, stockholders and claimants, are hereby perpetually enjoined from prosecuting against the new corporation or any nominee, assignee or grantee of the new corporation, or against any party to this cause, or against

any person or corporation claiming under any of them, or against said mortgaged properties to be transferred pursuant to this order and the Plan, or any part of said properties, any suit or proceeding arising out of or based upon any obligation or liability of the debtor or its said subsidiaries herein, or any claim, lien or charge with respect to said mortgaged properties or any part thereof, or otherwise to impose liability upon the new corporation, or upon its nominees, assignees or grantees, or upon any party to this cause or upon any person or corporation claiming under any of them, or upon said properties, or any part thereof, to be transferred pursuant to this order, except in subordination to this order; provided, however, that nothing herein contained shall be deemed to limit or restrict any right granted by or under the Plan or this order.

(11) That within sixty (60) days following the transfer of said properties from the debtor and its said subsidiaries to the new corporation as hereinabove directed, the new corporation shall file in this proceeding a report of said transfer and confirmation of the Plan, and shall give notice of such filing to all persons who have appeared in this cause, and that the provisions of any order heretofore entered in this proceeding, which by their terms would prevent the debtor and its said subsidiaries from performing any act required to be performed by it or them, pursuant to the terms of the Plan, are hereby modified and amended to permit the debtor and its said subsidiaries to carry out and perform in all respects the terms and provisions of the Plan.

Dated: September 8, 1938.

H. A. Hollzer
JUDGE

APPROVED AS TO FORM:

GIBSON, DUNN & CRUTCHER

By T. H. Joyce

Attorneys for Consumers Rock & Gravel Company, Inc.,
Bondholders' Protective Committee

O'MELVENY, TULLER & MYERS

By Graham L. Sterling, Jr.

Attorneys for Union Rock Company Bondholders' Protective Committee

MOTT, VALLEE & GRANT

By Kenneth E. Grant

Attorneys for E. Blois duBois, Objector to Plan of Reorganization.

Stanley Arndt

Attorney for Objectors Edward E. Hatch and Louis Van Gelder as Members of Subcommittee on Plan of Reorganization of the Stockholders' Committee

LATHAM, WATKINS & BOUCHARD

By Paul R. Watkins

Attorneys for Debtors.

[Endorsed]: Received Copy of the within Findings & Order this 2nd day of September, 1938. E. S. Williams In Pro Per. Filed R. S. Zimmerman, Clerk at 20 min. past 10 o'clock Sep - 8 1938 A. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

AGREED STATEMENT OF THE CASE

IT IS HEREBY STIPULATED AND AGREED by and between (a) E. BLOIS DUBOIS, objector to the plan of reorganization of Consolidated Rock Products Co., Union Rock Company, and Consumers Rock & Gravel Company, Inc., and appellant herein, by his attorneys of record herein, John G. Mott, Paul Vallée and Kenneth E. Grant; (b) F. B. BADGLEY, COL. R. E. FRITH, T. FENTON KNIGHT and WALTER S. TAYLOR, comprising the Union Rock Company Bondholders' Protective Committee (hereinafter called the "Union Committee"), by their attorneys of record herein, Messrs. O'Melveny, Tuller & Myers, Homer I. Mitchell and Graham L. Sterling, Jr.; (c) WM. D. COURTRIGHT, FRED L. DRÉHER, F. J. GAY, ALFRED GINOUX and GUY WITTER, comprising the Consumers Rock & Gravel Company, Inc., Bondholders' Protective Committee (hereinafter called the "Consumers Committee"), by their attorneys of record herein, Messrs. Gibson, Dunn & Crutcher and Thomas H. Joyce; (d) EDWARD E. HATCH and LOUIS VAN GELDER, comprising the Consolidated Rock Products Co. Preferred Stockholders' Committee (hereinafter called the "Preferred Stockholders' Committee"), by their attorney of record, Stanley Arndt; and (e) CONSOLIDATED ROCK PRODUCTS CO., the Debtor herein (hereinafter called "Consolidated"), by its attorneys of record, Messrs. Latham, Watkins & Bouchard and Paul R. Watkins, that the following, including the documents incorporated by reference in Paragraph 14 hereof, shall constitute an agreed statement of the case:

1. On May 24, 1935, Consolidated and its wholly-owned subsidiaries, Union Rock Company (hereinafter called "Union") and Consumers Rock & Gravel Company, Inc. (hereinafter called "Consumers"); filed herein their respective petitions for relief under Section 77B of the Bankruptcy Act of 1898 as theretofore amended and then in effect. Said petitions were duly and regularly filed and contained allegations proper and necessary to confer jurisdiction upon the court herein. No admission or allegation was made by said corporations, or any of them, that their assets amounted to less than their liabilities, but allegations were made that their assets had a value in excess of the amount which could be realized at that time upon a sale thereof or upon liquidation, and that if said corporations were not reorganized, the rights and interests of their creditors and stockholders would be seriously impaired; and allegations were likewise made that said corporations were unable to meet their debts as they matured and that they desired to effect a plan of reorganization pursuant to said Section 77B.

2. On May 24, 1935, the court herein made and entered its orders respectively approving said petitions of Consolidated, Consumers and Union for relief as properly filed under said Section 77B, and directing that Consolidated be permitted to remain in possession of its properties and those of its said subsidiaries, and fixing the time and place of the hearing and prescribing the notice to be given thereof upon the questions as to whether or not the Debtor's possession of said properties should be continued or a trustee or trustees thereof appointed. On July 2,

1935, after said hearing held on June 24, 1935, the court made and entered its order continuing the Debtor in possession of said properties, subject to the terms and conditions of said order.

3. On February 19, 1936, T. C. Rogers, for and on behalf of himself and other bondholders holding obligations of Union, filed his petition herein for the appointment of a trustee to take possession of the properties of the Debtor and to manage and operate the same. In said petition and affidavits filed by said T. C. Rogers in support thereof, said T. C. Rogers alleged, among other things, that whereas at the time of the acquisition of Union by Consolidated in 1928, Union had ten plants that were in good working condition, at the date of said petition in 1936, the Debtor had so operated said properties that there was only one Union plant which was immediately available for the production of rock; and that the Consumers plants, lands and equipment were then in good, proper and working order. Said petition of T. C. Rogers was referred by the court to Frank P. Doherty as Special Master; and after hearing held on the same, said petition was denied on the ground that no sufficient showing had been made that the properties were not being operated and managed as efficiently as possible by the Debtor through its vice president, Frank Gautier, and its vice president and secretary, Robert Mitchell, who by virtue of an understanding between Consolidated, the Union Committee and the Consumers Committee were acting as co-managers of the properties and the business, both of said persons having had many years of experience in the rock and gravel business, and said Gautier having been an officer or employee of Consumers and said Mitchell having been an officer or employee of

Union prior to their acquisition by Consolidated in 1928, and both having been closely associated with the consolidated business since 1928.

4. On June 1, 1936, the Consumers Committee filed its petition herein setting forth a proposed plan of reorganization involving the segregation and separate operation of the Consumers properties for the sole benefit of Consumers bondholders, alleging that said committee had on deposit approximately 56% of the outstanding Consumers bonds and that Consumers was insolvent, and seeking, among other things, the appointment of a trustee of Consumers properties, the reference to a special master of the segregation and identification of properties subject to the indenture securing the Consumers bonds, the evaluation of the Consumers properties, the termination of the Operating Agreement of July 15, 1929, between Consolidated and its subsidiaries, the rescission of the purported modification dated February 16, 1933, of said Operating Agreement, and rendering of an account between Consolidated and Consumers, and the allowance of a claim in favor of Consumers against Consolidated based on the alleged commingling of Consumers assets by Consolidated and the possession, use and management thereof by Consolidated, on the termination of said Operating Agreement, and an accounting thereunder and/or on the basis of the inter-company accounts as between Consolidated and Consumers. Thereafter the Consumers Committee submitted to all known bondholders of Consumers said proposed plan of reorganization involving the segregation and separate operation, in a new corporation to be formed for that purpose, of all of the properties of Consumers for the sole benefit of Consumers bondholders; and as a result of such

submission, the holders of more than two-thirds in amount of the outstanding Consumers bonds either deposited their bonds with the Consumers Committee or otherwise accepted and approved said proposed plan of reorganization.

5. Immediately after the filing of said proposed plan of reorganization by the Consumers Committee, the Union Committee and Consolidated recommenced negotiations with the Consumers Committee looking toward the formulation of a plan of reorganization which would be acceptable to Consolidated, the Consumers Committee and the Union Committee and which would preserve the properties and business of Consolidated and its subsidiaries as an operating unit. Such negotiations resulted in the abandonment of said plan of reorganization by Consumers and in the adoption by the Consumers Committee, the Union Committee and Consolidated of the plan of reorganization dated March 15, 1937, finally proposed by said committees and Consolidated and finally confirmed herein on September 8, 1938.

6. At the hearing on November 1, 1937, before the above entitled court on the confirmation of said plan of reorganization dated March 15, 1937, the court made its order filed herein on November 3, 1937, referring said plan of reorganization and the objections thereto (except objections going to constitutionality) to Frank P. Doherty, Special Master; and after the conclusion of the hearing before the Special Master, said Special Master filed his Findings and Report herein on February 14, 1938. All of the exhibits referred to in or filed with said Findings and Report of the Special Master were admitted in evidence by the Special Master.

7. All of the statements and findings contained in the Findings and Report of Special Master Frank P. Doherty filed herein on February 14, 1938, are supported by sufficient evidence, except those portions thereof specified in the exceptions and supplemental exceptions of E. Blois duBois to said Findings and Report, and also in Paragraphs XI to XVIII, both inclusive, of said appellant's Assignment of Errors filed on October 8, 1938, in the United States Circuit Court of Appeals for the Ninth Circuit, about which there is dispute. Appellant contends that said portions of the Findings and Report of the Special Master are not supported by evidence, and appellees contend that said portions are supported by sufficient evidence.

8. At the inception of the hearing before Frank P. Doherty as Special Master on the confirmation of said plan of reorganization dated March 15, 1937, motion was made by counsel for said duBois for appointment by the Special Master of appraisers to report to the Special Master the value of the various interests involved in said plan, and particularly the value of the property securing the outstanding bonds of Union, the value of the property securing the outstanding bonds of Consumers, and the value of the properties proposed to be contributed by Consolidated to the new company referred to in said plan. Like motion was made by counsel for the Preferred Stockholders' Committee, but was withdrawn at the end of the hearing by counsel for the Preferred Stockholders' Committee for the reasons stated by him, that he and his committee had become convinced by the evidence, first, that an appraisal would be of no aid to anyone and would merely delay matters and entail large unnecessary expense, and second, that the total values as testified to by Mr. Mitchell, Mr. Gauthier

(Testimony of Graham L. Sterling, Jr.)

and Mr. Rogers were so near together that he and his committee would accept the average of their total values as the true valuation. Motion was also made by counsel for said duBois for the appointment of an auditor or auditors to examine the books of all the companies involved in said plan and report to the Special Master the indebtedness of Consolidated to Union and Consumers under said Operating Agreement of July 15, 1929, and the purported modification thereof dated February 16, 1933. Decision on each of said motions was deferred by the Special Master until the taking of evidence was completed, and at the completion of the hearing both said motions were renewed by counsel for duBois and taken under submission by the Master.

9. The following evidence was adduced at said hearing before the Special Master on the confirmation of said plan of reorganization of March 15, 1937, with respect to those portions of the Findings and Report of the Special Master filed herein on February 14, 1938, referred to in Paragraph 7 hereof:

(a) GRAHAM L. STERLING, JR.,

a witness on behalf of the proponents of said plan of reorganization of March 15, 1937, testified as follows:

"I am a member of the law firm of O'Melveny, Tuller & Myers, attorneys for the Union Committee, and am actively in charge of the services rendered by said firm to said committee. Shortly after the commencement of this proceeding and the formation of the bondholders' committees, negotiations at arm's length were undertaken between the Union Committee, the Consumers Committee and Consolidated in an effort to work out a plan of reor-

(Testimony of Graham L. Sterling, Jr.)

ganization that would be fair and acceptable to the three groups of security holders whose interests were in many respects conflicting. These negotiations, which commenced in the spring of 1935, had been particularly difficult because of the position of the Consumers Committee that the Consumers properties were worth more than the Union properties, in that they were in better operating condition and actually had contributed and were contributing a larger portion of the earnings of the combined properties. The Union Committee was reluctant to accede to that position, contending that the Union properties were worth more than the Consumers properties and that the value was the approximate ratio of the respective amounts of outstanding bonds of the two companies. These negotiations broke down in the spring of 1936, and in June 1936 the Consumers Committee filed its own independent plan of reorganization seeking a segregation of the Consumers properties in a separate corporation to be formed for that purpose, the securities of which would be distributed only to Consumers bondholders. The Consumers Committee was successful in obtaining the approval of its said plan by holders of more than two-thirds of the outstanding Consumer bonds. Thereafter, the Union Committee, being satisfied that the properties of the companies involved had been so operated as a unit and that there had been such a commingling of the properties that any attempt at segregation would involve prolonged litigation and the probable destruction of the business, reopened negotiations with the Consumers Committee and Consolidated which extended over a period of several months and culminated in the agreement of the Union Committee and the Consumers

(Testimony of Graham L. Sterling, Jr.)

Committee and Consolidated on the plan of reorganization of March 15, 1937, which was finally confirmed. Said plan of reorganization of March 15, 1937, represented a bona fide compromise of the conflicting viewpoints of the two bondholders' committees and Consolidated. The Consumers Committee had argued that since the Consumers properties were contributing approximately 60% of the earnings of the Consumers and Union properties as a whole, 60% of the income should be applied to the servicing of the new Consumers bonds. The Union Committee had argued that since the Union bonds represented approximately 60% of the total bonded debt of Union and Consumers, and the properties probably had a value in the same ratio, 60% of the income should be applied to servicing the new Union bonds. The essence of the compromise on this disputed point was that although there should be no difference between the new Union bonds and the new Consumers bonds as to lien, the income available for the servicing of the new bonds should be divided, instead of 60-40 in favor of Consumers or 40-60 in favor of Union, on a 50-50 basis between the two series of new bonds.

"The Union Committee had often considered the desirability of obtaining an outside, detailed appraisal of all of the assets of the various companies, but had concluded: (1) that the commingling of machinery and equipment of the companies during nine years of operation as a unit made it practically impossible to obtain appraisals of each of the properties separately; and (2) that being satisfied from their own investigations that the properties as a whole, on a fair going concern valuation, were undoubtedly worth more than the claims on the outstanding bonds of the two subsidiaries, this fact alone would justify participation by Consolidated stockholders in any joint plan of reorganiza-

(Testimony of Graham L. Sterling, Jr.)

tion, and there was, therefore, no need of going to the expense and delay entailed by an outside appraisal. As to the assets of Consolidated not under the Union or Consumers bond indentures, Mr. Mitchell and Mr. Gautier, the operating men in charge of the companies, placed on them a value in excess of \$500,000. We had reason to believe these estimates were made honestly and in good faith and represented as nearly the truth as any other estimate.

"The Union Committee had not overlooked the possibility that the subsidiaries of Consolidated might each have a cause of action against Consolidated under the Operating Agreement between Consolidated and its subsidiaries, and that the bondholders of the subsidiaries might acquire these causes of action in the event of a foreclosure, and that by this means the subsidiaries' bondholders might be able to have applied to their claims whatever, if anything, could be realized by a prosecution of these causes of action against Consolidated even though Consolidated had not expressly assumed liability for the payment of its subsidiaries' bonds. Even under such facts, nothing would be available to the bondholders until after foreclosure and sale and after the prosecution to final judgment, including possible appeals, of the causes of action against Consolidated. By the time separate foreclosures were prosecuted, the business of all of the companies would be disrupted, and by the time the causes of action against Consolidated were prosecuted, Consolidated might have little or nothing with which to satisfy any judgments that might be obtained. Such a course would result in substantial injury to the bondholders' security. In conferences with attorneys for Consolidated, the latter had asserted various defenses to any such causes of

(Testimony of Graham L. Sterling, Jr.)

action under the Operating Agreement, pointing out that (1) when the subsidiaries' bonds had been issued, they were not subsidiaries of Consolidated but independent companies separately owned, and that the Operating Agreement had not been executed until several years later, after Consolidated had been organized and had acquired all of the stock of Union and Consumers, thus making them wholly-owned subsidiaries of Consolidated; (2) the Operating Agreement, being made between a parent and its wholly-owned subsidiaries and expressly providing that it was not made for the benefit of any third party, was in effect an agreement between Consolidated and itself and could therefore be terminated, and all liability thereunder extinguished, by action of the parent or its subsidiaries at will; (3) the benefits derived by the subsidiaries from their joint operation by Consolidated under the Operating Agreement exceeded any detriment which might thereby have been caused the subsidiaries, and thus on a final balancing of the accounts between Consolidated and its subsidiaries under the Operating Agreement it might well be ultimately established that the subsidiaries were indebted to Consolidated instead of Consolidated being indebted to its subsidiaries. I do not recall that it was ever contended that Consolidated had terminated the Operating Agreement. I do not recall that any statements showing the intercompany liabilities under the Operating Agreement were obtained by the bondholders' committees. However, we took steps on behalf of Title Insurance and Trust Company, as trustee under the Union bond indenture, to preserve whatever claim might exist on the Operating Agreement by obtaining extensions of time for the filing of such a claim. With respect to the actual status of financial accounts

(Testimony of Graham L. Sterling, Jr.)

between Consolidated, Consumers and Union, the proponents of the plan proposed it without determining the liability in dollars and cents. The existence of any liability depends upon determination by a court of an extremely difficult question or questions of law and fact.

"We at no time advised the Union Committee that there was no possibility of liability under the Operating Agreement, but we did advise that, in our opinion as attorneys, the chance of establishing it was extremely remote and would involve a difficult suit. We pointed out that any attempt to enforce any possible cause of action of the subsidiaries against Consolidated would involve protracted litigation and a probable disruption of the business, to the ultimate detriment of the bondholders, and that to determine the fairness of permitting Consolidated stockholders to participate in a joint plan of reorganization, it was only necessary to conclude that the properties and business of all of the companies involved, taken at a fair going business value, exceeded the claims on the subsidiaries' bonds; that if the Union Committee was satisfied that such an excess or equity existed, then participation by Consolidated stockholders would not only be justified but necessary in order to make the plan fair, regardless of the existence of any intercompany liabilities between Consolidated and its subsidiaries. I also pointed out that, on the other hand, if Consolidated was correct in its position that the bondholders could not establish or enforce any liability of Consolidated to its subsidiaries under the Operating Agreement, Consolidated would be contributing to the plan its assets of an estimated value of from \$500,000 to \$700,000, which will be pledged as security for the new bonds, and thus justify participation in the plan by Consolidated stockholders."

(Testimony of Thomas H. Joyce)

(b) THOMAS H. JOYCE,

a witness on behalf of the proponents of said plan of reorganization of March 15, 1937, testified as follows:

"I am a member of the law firm of Gibson, Dunn & Crutcher and have been counsel for the Consumers Committee. Mr. Ginoux, one of the members of the Consumers Committee, made a thorough examination of the properties owned by Consolidated and the two subsidiaries, and made his report to the Committee covering his examination. The Committee members themselves had made field investigations and actually gone out and looked at all the properties. I think that the two San Francisco members of the Consumers Committee had made a survey about one year ago and that Mr. Ginoux made his approximately at that time. These surveys were made prior to the time that the Consumers Committee filed in these proceedings its own separate plan of reorganization in which it was alleged that Consumers was insolvent. I might add that such allegation was a necessary one. The Consumers Committee's plan sought to remove the properties of that company from the other properties, and also sought appraisal of all properties involved and an accounting under the Operating Agreements. My law firm, as legal representative of the committee, had advised that in its opinion there was a possibility of substantial recovery by Consumers against Consolidated under the Operating Agreement of 1929, and the Consumers Committee's plan contemplated use of the proceeds of any such recovery in the future operations of the reorganized Consumers company."

(Testimony of Robert Mitchell)

(c) ROBERT MITCHELL,

a witness on behalf of the proponents of said plan of reorganization of March 15, 1937, testified as follows:

"I am vice president and secretary of Consolidated, secretary of Union, and secretary of Consumers. I was formerly an officer of Union, starting with that company upon its organization in 1922, and since the organization of Consolidated in 1929 I have been connected with that company. After Consolidated had been organized and had purchased all of the outstanding stock of Union and Consumers, Consolidated had some \$500,000 of cash working capital left in its treasury from the sale of Consolidated stock to the public, and these moneys were used in the general operations of the properties. Reliance Rock Products Company is a wholly-owned subsidiary of Union. Under the plan of reorganization it will be eliminated as a separate entity, as all of its assets are to be transferred to the new company. The Operating Agreement was entered into in 1929 to permit unified operation of the properties of all the companies, Consolidated taking over all cash, accounts receivable and payable, equipment and inventories of the subsidiary companies, and the subsidiaries thereupon ceasing to operate as going companies, all operations being carried on by Consolidated. In the course of time, as a result of the operations of all of the properties under one management as one business, machinery and equipment owned by the various companies became commingled as the occasion arose. If a Consumers plant became worn out in some respect, equipment would be taken from an idle Union plant and used to replace the worn-out item on the Consumers plant. Wheels from a Consumers truck would be put on a Union truck, for

• (Testimony of Robert Mitchell)

example, and vice versa. It was practically impossible to keep track of this intermixing of equipment, and no complete or accurate record was kept. Replacements were purchased by Consolidated with funds which may have been a part of Consolidated's original \$500,000 of working capital, or proceeds from the operations of a Union or Consumers plant, but no separate record of the source of such funds was kept, since all of the properties and assets of all the companies were in the possession of Consolidated and treated for practical purposes as though they belonged to Consolidated. In 1931 we sold approximately 60% of the total market. In 1937 it would run possibly 40%. In 1929 the earnings were sufficient to cover all bond requirements and necessary reserves, leaving, after all deductions, a profit of \$90,000. In the latter part of 1931 the directors considered the plan of having a reappraisal of the properties. The appraisal was made and submitted to the stockholders, and in October 1931 the value of the assets was reduced and a new stated value given to the capital stock. Stated set value of the preferred stock was \$1,800,000, and a value of \$1 was given to the common. The purpose of that was to reduce the very heavy book reserves that had prior to that time been necessary, so if there were earnings they would be made available for preferred stock dividends. Dividends on the preferred stock of Consolidated were paid only in 1929 and 1931, amounting in the first of the two years to \$262,500 and in the latter year to \$380,625, or a total of \$643,125.

• "Complete accounts were kept showing the status of accounts as between Consolidated, Union and Consumers under the Operating Agreement. As of October 31, 1937,

(Testimony of Robert Mitchell)

the books of Consolidated reflected a liability by reason of its current accounts with its subsidiaries, (not including credits for depreciation, depletion and amortization), due upon termination of the Operating Agreement, of \$745,722.15, and a liability to the subsidiaries on account of accumulated depreciation, depletion and amortization on subsidiary company properties from April 1, 1929, computed on values shown on the books of the subsidiaries, of \$4,982,166.94, making a total liability of Consolidated to its subsidiaries, as reflected by the books, of \$5,727,939.09. As of the same date the balance sheet of Union showed total claims of Union against Consolidated in the sum of \$3,479,569.17, offset in part by an obligation from this subsidiary to Consolidated on the current account amounting to \$540,707.58. As of the same date the balance sheet of Consumers showed total claims against Consolidated in the sum of \$2,026,821.73, against which the balance sheet reflected no offsetting claim in favor of Consolidated. These entries on the books of Consolidated and the two subsidiaries evidence the status of accounts under the Operating Agreements.

"In 1929, after Consolidated acquired Union and Consumers, the total value of the properties then held as fixed by an appraisal by J. G. White Engineering Corporation of New York was approximately \$15,000,000. When the stated value of stock was reduced in 1931, a revaluation of the properties was made by Mr. Jeffries and Mr. Wittenberg, officers of Consolidated, and the value fixed at \$4,414,425.

"In my opinion, taking the plants as they are and evaluating all properties on a fair going concern value basis, the value of the Union properties is at least

(Testimony of Robert Mitchell)

\$1,975,200; of the Consumers properties, at least \$1,267,100; of the Reliance properties, at least \$175,000; and of the properties of Consolidated, at least \$500,000. Said values do not include Consolidated's net current assets of approximately \$340,000 or any value for its goodwill and trade names, which I estimate at \$500,000."

The balance sheet of Consolidated and its wholly-owned subsidiary companies as of September 30, 1937, was produced by the witness and introduced in evidence as Exhibit 41. Said balance sheet showed total assets of \$3,537,619.60. Current assets of \$680,816.33 were shown, made up as follows: cash \$210,922.01; accounts and notes receivable, trade, rents, claims and other, net after provision for losses and discounts, \$269,565.02; inventories at lower of cost or market \$110,821.66; prepaid items, including insurance and taxes, operating supplies and sundry items, \$89,507.54.

Said balance sheet showed liabilities as follows: current accounts payable, accrued items and miscellaneous, other than bond interest, \$237,779.36; purchase money obligations past due, and payments extended by agreement, payable during and after 1937, \$100,252.96; accrued interest on bonds \$717,976.69, said total figure reflecting accrued interest on the bonds of Union from September 1, 1933, in the sum of \$462,151.69 and on the bonds of Consumers from January 1, 1934, in the sum of \$255,825.

Outstanding bonds of Union appeared in the total amount of \$1,877,000, of which \$273,000 matured on September 1, 1937, \$54,000 on September 1, 1938, and \$1,550,000 to mature between 1939 and 1947.

Said balance sheet showed outstanding Consumers bonds maturing July 1, 1938, in the amount of \$1,137,000.

(Testimony of Robert Mitchell)

Total liabilities shown amounted to \$4,106,216.68, exclusive of capital and surplus liability, with an operating deficit shown for the period from October 1, 1931, less \$18,912.38 paid-in surplus, of \$2,370,598.08, with the result that liabilities shown exceed assets by \$570,597.08.

The witness then produced the balance sheet of Union of March 31, 1929, which was introduced in evidence as Exhibit 14. It showed total current assets of \$621,815.69 against current liabilities of \$194,055.86. Current assets consisted of: cash \$316,153.83; accounts receivable after reserve for discounts and losses \$260,091.70; notes receivable \$399.00; accrued interest \$514.46; inventories of rock and gravel \$44,656.70. Producing lands, leaseholds, bunker sites and miscellaneous land, plants, bunkers, structures, machinery and equipment, automobiles, trucks and trailers were shown at a value of \$8,227,053.86, less reserves for depreciation, depletion and amortization of \$1,582,184.87, reducing the value of such properties to \$6,644,868.99.

Total assets shown amounted to \$9,887,442.11. Total liabilities, capital and surplus, appeared in the same amount, i. e., \$9,887,442.11, of which sum capital stock value was placed at \$2,410,781.45.

The balance sheet of Union Rock Land Company as of March 31, 1929, was produced by the witness and introduced in evidence as Exhibit 16. It showed total assets of \$1,081,475.07. Liabilities, other than capital and surplus, were placed at \$354,674.11, of which \$1,502.23 represented current liabilities against current assets of \$10,814.93.

The balance sheet of Reliance Rock Company as of March 31, 1929, was produced by the witness and intro-

(Testimony of Robert Mitchell)

duced in evidence as Exhibit 18. It showed total assets of \$1,665,061.09, of which \$84,537.63 represented current assets. Lands, plants, equipment, etc., after reserves for depreciation and depletion, were placed at \$1,533,389.60. Total liabilities were placed at \$224,907.49, of which \$210,907.49 represented current liabilities. Capital stock, earned surplus and surplus from revaluation of land appeared in the sum of \$1,440,153.60.

The balance sheet of Builders Crushed Rock Products Co. as of March 31, 1929, was produced by the witness and introduced in evidence as Exhibit 17. It showed total assets of \$308,891.14, of which \$21,266.91 represented current assets. Lands, plants, equipment, etc., after reserves for depreciation and depletion, were placed at \$252,042.77. Current liabilities appeared at \$18,031.41, capital stock, earned surplus, capital surplus and surplus from revaluation of leaseholds, at \$290,859.73.

The balance sheet of Consumers as of March 31, 1929, was produced by the witness and introduced in evidence as Exhibit 15. It showed total current assets of \$521,176.68, including cash of \$79,415.85. Against current assets there appeared current liabilities of \$386,248.77. Properties, plants, bunkers, machinery, equipment and automotive equipment, after deduction of reserves for depreciation and depletion, were valued at \$4,988,134.66.

The witness produced the balance sheet of Consolidated and its wholly-owned subsidiaries as of March 31, 1929, and the same was introduced in evidence as Exhibit 20. Lands, deposits, leaseholds, buildings, equipment, autos and trucks, less reserve for depreciation, depletion and amortization, were valued therein at \$13,845,815.70. Total assets appeared in the sum of

(Testimony of Robert Mitchell)

\$16,788,214.77, of which current assets were shown in the sum of \$1,333,888.32. Total capital stock and surplus was listed at \$11,594,465.96. Current liabilities appeared in the sum of \$882,751.73.

The witness corrected a tabulation of the acreage contemplated to be contributed by the various companies under the proposed plan of reorganization, which was then received in evidence as Exhibit 21 and showed proposed contributions as follows:

By Union and its subsidiaries:

	<u>Fee</u>	<u>Lease</u>	<u>Total</u> <u>Acres</u>
Plant	1639.21 acres	461.35 acres	2100.56
Bunkers	40.78	9.40	50.18
Nonoperative	341.11	—	341.11
	<hr/> 2121.10	<hr/> 470.75	<hr/> 2491.85

By Consumers:

Plant	252.71 acres	919.84 acres	1172.55
Bunkers	4.28	—	4.28
Nonoperative	64.33	—	64.33
	<hr/> 321.32	<hr/> 919.84	<hr/> 1241.16

By Consolidated:

Plants only	107.30 acres	35.00 acres	142.30
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By subsidiaries with divided ownership:

Plant	2.10 acres	20.00 acres	22.10
Bunkers	—	3.82	6.53
Nonoperative	.20	—	.20
	<hr/> 2.30	<hr/> 23.82	<hr/> 28.83

(Testimony of Robert Mitchell)

The witness produced a list of properties owned by Consolidated which are not under the Union or Consumers indentures, and the same was introduced in evidence as Exhibit 19. It showed miscellaneous properties at an original cost of \$860,007.39, which, after deduction on account of depreciation, was shown at a net value as of September 30, 1937, of \$296,465.58. Additional assets not included in such valuation were listed to include 60% of the stock of Sunset Rock Products Company, original cost \$246,383.57; deduction for depreciation \$155,734.86; net value as of September 30, 1937, \$90,648.71; Atlas Mixed Mortar, net value as of September 30, 1937, \$7,524.18.

The witness produced and there was introduced in evidence as Exhibit 29 a summary of all the properties of Consolidated and its wholly-owned subsidiaries, as valued May 1, 1931, under the so-called Jeffries-Wittenberg appraisal, the properties appearing therein as follows:

(Testimony of Robert Mitchell)

	Fee Land (Rock)	Fee Land (Bunkers & Misc.)	Leased Land	Improve- ments	Autos & Trucks	Total
Atlas Mixed Motar Co.	—	\$ 7,750	—	\$ 2,500	\$ 2,900	\$ 13,150
Builders Cr. Rock Co.	—	—	—	35,000	2,420	37,420
Consoli- dated	7,500	2,500	—	138,920	85,965	234,945
Con- sumers	163,050	504,400	—	1,067,150	95,535	1,830,135
Reliance Rock Co.	136,600	—	—	180,000	410	317,010
Sunset Rock P. Co.	—	2,750	—	75,000	—	77,750
Union	466,700	335,450	—	763,140	37,015	1,602,305
Union Rock Land Co.	140,100	115,310	—	11,500	34,800	301,710
TOTAL	913,950	968,160		2,273,270	259,045	4,414,425

By stipulation of the parties the witness, Mr. Mitchell, submitted to the Special Master as evidence herein the data appearing in the letter of the witness to the Special Master, dated November 26, 1937, appended to the Report of the Special Master.

(Testimony of Robert Mitchell)

The witness produced a tabulation of property valuations of Union (including Union and Builders C. R. P. Co.) and of Consumers, both of November 17, 1937, which was introduced in evidence as Exhibit 27, said exhibit showing values as follows:

Union:

Plants and properties	1,173,000
Bunkers and yards	490,000
Trucks, 52 pieces	40,000
Office furniture	2,500
Unimproved real estate	129,000
Union Rock Land	133,700
Builders	7,000
Total	<hr/> \$1,975,200

Consumers:

Plants	\$1,094,500
Bunkers and yards	55,500
Unimproved real estate	71,600
One-half interest Atlas Mortar	3,000
Office furniture and equipment	2,500
Trucks, 60 pieces	40,000
Total	<hr/> \$1,267,100

(Testimony of Robert Mitchell)

The witness read the following tabulation of production and tonnage produced by the various companies respectively from 1931 to September, 1937:

	1931		1932	
	Tons Produced	Percent of Total	Tons Produced	Percent of Total
Consumers	1,583,265.30	58.09	1,632,021.61	66.44
Union	909,182.98	33.36	581,484.21	23.67
Reliance	3,583.65	.13	3,527.34	.14
Consolidated	229,455.05	8.42	239,370.24	9.75
Totals	2,725,486.98	100.00	2,456,403.40	100.00

	1933		1934	
	Tons Produced	Percent of Total	Tons Produced	Percent of Total
Consumers	974,611.28	50.45	639,152.26	75.66
Union	861,260.65	44.58	100,356.62	11.87
Reliance	—	—	—	—
Consolidated	96,011.61	4.97	105,359.17	12.47
Totals	1,931,883.54	100.00	844,868.05	100.00

	1935		1936	
	Tons Produced	Percent of Total	Tons Produced	Percent of Total
Consumers	841,025.60	78.41	1,399,082.18	63.02
Union	112,134.75	10.45	567,873.35	25.58
Reliance	—	—	—	—
Consolidated	119,428.56	11.14	253,168.76	11.40
Totals	1,072,588.91	100.00	2,220,124.29	100.00

(Testimony of Robert Mitchell—Frank Gautier)

	1937 (9 Mo's.)		TOTALS FOR ENTIRE PERIOD	
	Tons Produced	Percent of Total	Tons Produced	Percent of Total
Consumers	1,131,739.99	59.60	8,200,898.22	62.36
Union	612,832.98	32.27	3,745,125.54	28.48
Reliance	—		7,110.99	.06
Consolidated	154,213.18	8.13	1,197,006.57	9.10
Totals	1,898,786.15	100.00	13,150,141.32	100.00

(d) FRANK GAUTIER,

a witness on behalf of the proponents of said plan of reorganization of March 15, 1937, testified as follows:

"I am an executive officer of Consolidated, and with Mr. Mitchell have acted as co-manager of Consolidated and its subsidiaries since the commencement of the reorganization proceeding. For many years prior to the reorganization of Consolidated in 1928, I had been an officer of Consumers and for these reasons I am familiar with all the properties of Consolidated, Union and Consumers. In my opinion, on a fair going concern basis, exclusive of net current assets and goodwill, and taking the plants as they are, the properties of Union are worth at least \$1,750,000, the properties of Consumers are worth at least \$1,436,000, the properties of Reliance are worth at least \$190,000, and the properties of Consolidated are worth at least \$534,000."

(Testimony of T. C. Rogers)

(e) T. C. ROGERS,

a witness on behalf of certain appearing bondholders who neither objected to nor consented to said plan of reorganization of March 15, 1937, testified as follows:

"I was employed by Union for many years prior to the purchase of Union by Consolidated in 1928. I am thoroughly familiar with the properties of both Union and Consumers, having been engaged in the rock business practically all my life. In my opinion the value of the Union properties is far greater than that of Consumers. Union owns in fee a large acreage of the finest rock lands in this section of the country, while the Consumers properties consist largely of leaseholds, with several of its plants and holdings in the San Fernando Valley, which furnishes a type of rock inferior to that of the San Gabriel Valley, where Union has large plants and holdings. Union has in addition fee ownership of bunker sites, for the distribution of rock and other materials, located in strategic points throughout the Los Angeles district. These bunker locations are in practically all the industrial sections, and the sites themselves have very substantial valuations independent of their use for bunker purposes. In my opinion the Union properties could be segregated from the properties of Consumers and Consolidated and operated independently to earn interest on a valuation of \$7,000,000. I would be interested personally in working out some arrangement for the operation of the Union properties if they were so segregated. These properties can be operated economically without any great amount of new working capital. Operations would not be handicapped by lack of automotive equipment as this is readily available on a

(Testimony of T. C. Rogers—Guy Witter)

rental basis. In fact, in the case of the rock company with which I am now connected, such equipment is frequently obtained on such rental basis. In my opinion the physical properties of Union have a present value of \$2,318,000, the Consumers properties a value of \$750,000, and the Reliance properties a value of \$200,000. These valuations are given on the basis of the operations of all properties as a business unit. In placing the stated value on the Union properties, I do not take into consideration the possibility of oil production from the bunker sites owned in fee by that company, one in the heart of the Wilmington oil district, and one in the heart of the Redondo oil district."

(f) GUY WITTER,

a witness on behalf of the proponents of said plan of reorganization of March 15, 1937, testified as follows:

"I am a member of the investment banking firm of Dean Witter & Co., the principal original underwriter of the Consumers bonds. At the time the Consumers bonds were underwritten and sold to the public, Consumers was an independent operating company with no affiliation or connection with Union. In fact, Union was one of the principal and most bitter competitors of Consumers. After the occurrence of defaults under the indenture securing the Consumers bonds, my firm organized the Consumers Committee, of which I am chairman. I endeavored to secure the services, as members of the Consumers Committee, of Consumers bondholders who were best qualified to serve the interests of the Consumers bondholders as a class. My firm and I had always been of the opinion that the Consumers bonds were better secured than the Union

(Testimony of Guy Witter)

bonds, and that opinion had been reflected by the fact that Consumers bonds during the past four or five years consistently sold on the open market at higher prices than the Union bonds. The other members of the Consumers Committee and I, after investigating the condition of the properties, concluded that the Consumers properties were in better operating condition than the Union properties; and the figures showed that the Consumers properties were contributing more income to the consolidated business. For these reasons the Consumers Committee always felt that in any joint plan of reorganization, Consumers bondholders should receive somewhat better treatment than Union bondholders. It was this view which prompted the Consumers Committee to propose their separate plan of reorganization in June 1936 involving a segregation of the Consumers properties for the sole benefit of the Consumers bondholders. Said plan was ultimately accepted by the holders of more than two-thirds of the Consumers bonds, and the Consumers Committee was sincere and bona fide in their statements that they intended to consummate that plan unless a joint plan satisfactory to Consumers could be worked out. The negotiations conducted between the Consumers Committee, Union Committee and Consolidated have always been at arm's length, and it was only with great reluctance that a majority of the members of the Consumers Committee finally agreed to accept the plan of reorganization of March 15, 1937. As a matter of fact, one member of the Consumers Committee, holding a substantial amount of Consumers bonds;

(Testimony of Guy Witter—T. Fenton Knight)

was so opposed to the plan of reorganization of March 15, 1937, as not being sufficiently favorable to the Consumers bonds that he did not personally accept the plan until several months after the other members of the Consumers Committee had accepted the plan and submitted it to the Consumers bondholders.

"I am aware that the petition filed with the court seeking separate reorganization of Consumers alone alleged insolvency of that company and that such allegation was made by the committee after its investigation of the company's holdings. In my opinion Union was then in worse condition.

"The average holding of Consumers bonds was approximately \$3,000 in principal amount."

(g) T. FENTON KNIGHT,

a witness on behalf of the proponents of said plan of reorganization of March 15, 1937, testified as follows:

"I am a member and secretary of the Union Committee. I have been engaged in the investment business for many years, and since 1932 have specialized in reorganization work. The Union Committee was organized by E. H. Rollins & Sons Incorporated, the original underwriter of the Union bonds. Said firm had endeavored to select as members of the Union Committee representative Union bondholders with investment experience and sound business judgment. The members of the Union Committee had no interest except to work out the best plan of re-

(Testimony of T. Fenton Knight)

organization possible for the Union bondholders. In negotiating with the Consumers Committee, the Union Committee was faced with the fact that for a number of reasons (which did not necessarily reflect any discredit on the business judgment of the previous Consolidated managements) Consolidated had during the past ten years kept the Consumers plants in better operating condition than the Union plants; that although Union had a much greater area in fee acreage than Consumers, much of such acreage had no further utility in the company's business, and it having been practically impossible to dispose of this acreage due to the fact that the Union bond indenture did not permit release of lands during the pendency of a default, the result was that no matter what the potential value of the Union lands might be, their present value to the going business was probably not as great proportionately as the value of the Consumers plants. Although the plan of reorganization of March 15, 1937, was a compromise plan, I believe that it is essentially a fair plan under all the circumstances, and certainly preferable from the standpoint of the Union bondholders to any other plan or solution which could be worked out. I believe that the provisions of the plan permitting the liquidation of nonoperating properties and application of the proceeds to bond retirement would shortly result in an equalization of the amounts of the two series of new bonds, and this factor largely offsets any disadvantage to the Union bondholders arising from the provision of

(Testimony of T. Fenton Knight)

the plan that 50% of the net income of the new company should be used to service the securities going to the Consumers bondholders. I sincerely believe that if the plan of reorganization of March 15, 1937, should be upset or refused confirmation, the Consumers Committee would proceed with the foreclosure of the Consumers bonds and that the resulting dismemberment of the consolidated properties would result in great loss to the Union bondholders.

"The Union Bondholders' Protective Agreement provides: 'The Committee may compensate E. H. Rollins & Sons Incorporated for services in soliciting the deposit of bonds hereunder at a rate not exceeding \$5.00 per \$1,000 principal amount of deposited bonds.' The Committee has not yet reached any decision as to whether or not Rollins should be compensated to any extent. In any event any such compensation will be subject to court approval just as is any other expense of reorganization.

"The largest single holder of Union bonds consenting to the plan was Consolidated, holding \$102,500 in principal amount of bonds. The next largest holders consenting held respectively \$30,000, \$22,000, \$18,000, \$15,000, \$14,000, \$12,000, \$10,000 and \$10,000. There are about 650 bondholders, the average holding between \$2,500 and \$3,000 in principal amount.

"Excluding the consent of Consolidated to the plan as the holder of \$102,500 of bonds, the plan was consented to by 67.26% of Union bondholders."

(h) E. BLOIS duBOIS,

testifying in objection to the plan by stipulation of evidence in his absence, testified as follows:

"I own and hold Union bonds dated as of December 1, 1927, in the principal amount of \$150,000, \$10,000 of which became due and payable September 1, 1933, \$1,000 September 1, 1934, and \$16,000 September 1, 1937. I also own and hold Consumers bonds dated June 1, 1928, in the principal amount of \$31,500. All of the Consumers bonds were purchased between July 1, 1934, and April 17, 1935, prior to the filing of any petition for reorganization under Section 77B of the Bankruptcy Act. Said bonds were acquired from time to time over that period. Union bonds in the principal amount of \$72,000 were purchased between September 20, 1934, and May 8, 1935, also prior to the filing of any petition for reorganization. The balance of Union bonds, i. e., \$78,000 in principal amount, were purchased from time to time between June 5, 1935, and December 9, 1935.

"All of said bonds were purchased by me as an investment and after my studies of economic conditions, and particularly conditions surrounding the building industry, had convinced me that bonds of companies supplying building materials to the building trade afforded a good opportunity for investment. I was convinced from my

(Testimony of E. Blois duBois)

studies of conditions affecting the building industry throughout the United States, and particularly in Southern California, that the slump in building activity which commenced about 1927, or prior thereto, and continued into 1932 and 1933, would be followed by a period of increased building activity. My purchases were further dictated by my conviction that a building boom would undoubtedly occur in Southern California, and particularly in the Los Angeles area because of the phenomenal development in growth of said section. Prior to the filing of any petition for reorganization, I conferred with Mr. Buckbee and Mr. Gautier, officers of Consolidated, and was told by them that they believed the Consumers and Union bonds afforded good investment possibilities and that they figured that as soon as the volume of business picked up they would be able to pay off all interest and possibly the principal of the outstanding bonds, and that because of the nature of the building material business it would be possible in one good year alone to discharge all the outstanding bonds of said company. None of my bonds were acquired for purposes of speculation. I have never sold any of the bonds and never purchased any of them with the idea of taking advantage of market fluctuations.

"The average cost to me of my Union bonds was \$145 per \$1,000 of principal amount, and the cost to me of my Consumers bonds was \$210 for each \$1,000 of principal amount."

(Testimony of Henry Chase)

(i) HENRY CHASE,

a witness on behalf of the objector, E. Blois duBois, and also on behalf of bondholders appearing but neither objecting nor consenting, testified as follows:

"I was for many years prior to organization of Consolidated connected with Union as an accountant. After formation of Consolidated I became connected with that company in the same capacity and for several years had supervision of its accounting department.

"Prior to 1933 I had several conversations with executive officers of Consolidated with respect to accruing liabilities in favor of Union and Consumers under the Operating Agreement of 1929. These officers were concerned with the mounting liability, and in particular that arising from the item of depreciation, depletion and amortization of the properties of the subsidiary companies. I advised them that the accounts were being kept in strict conformity with the provisions of the Operating Agreement."

10. There was produced and introduced in evidence as Exhibit 12 to the Special Master's Report a copy of the Union bond indenture entered into as of September 1, 1927, between that company and Title Insurance and Trust Company, trustee, said indenture conveying to the trustee, as security for the bonds, all the fee and leasehold property of the company, together with all buildings, improvements, plants and structures then or thereafter placed or constructed upon said real property. Also conveyed to the trustee was:

"All furniture, equipment, fixtures, machinery, boilers, engines, drills, tools (including, among others, hand tools), automobiles, trucks and road vehicles, rails, tracks, locomotives, cars, steam shovels, derricks, implements and appliances now upon the above described real property (including, as aforesaid, leaseholds) or any part thereof, or belonging to the Company and used in or for or in connection with the production and/or manufacture and/or sale and/or transportation of rock, gravel and/or sand, or which hereafter may be acquired by the Company and be used in or for or in connection with the production and/or manufacture and/or sale and/or transportation of rock, gravel and/or sand, or which hereafter may be placed upon the above described real property (including, as aforesaid, leaseholds) or any part thereof and be owned by the Company and be used in or for or in connection with the production and/or manufacture and/or sale and/or transportation of rock, gravel and/or sand, to-

gether with all renewals, replacements and substitutions of or for such furniture, equipment, fixtures, machinery, boilers, engines, drills, tools (including among others, hand tools), automobiles, trucks and road vehicles, rails, tracks, locomotives, cars, steam shovels, derricks, implements and appliances as aforesaid, or any thereof."

By Paragraph IX of said bond indenture there was also conveyed to the trustee the following:

"All other property and estate of the Company, real, personal and mixed, whatever and wherever situate and whether now owned or hereafter acquired, it being expressly understood and agreed that this indenture shall and does cover and affect all property now owned and/or hereafter acquired by the Company to the same extent and to all intents and purposes as though all such property were herein particularly described."

Said indenture further provides that in the event of default and entry into possession of the trust estate by the trustee or receiver, "then and thereupon there shall accrue to and become a part of the trust estate and of the security hereunder and be and become subject to the lien of this indenture, all cash of the company then on hand or in bank, securities, including stocks, bonds, debentures and other evidences of interest in or ownership of property or of obligations owned by others, notes and bills and accounts receivable, book accounts, manufactured materials, and materials in process, raw materials not in place, supplies, choses in action and contracts for the sale

of materials at that time belonging to the company, together with all right, title, interest and claim of the company therein and thereto, all of which *** the trustee or any receiver *** may take into possession and hold and collect *** as part of the trust estate ***."

There was also produced and introduced into evidence as Exhibit 13 to the Special Master's Report the Consumers bond indenture dated July 1, 1928, entered into by that company and Bank of America National Trust and Savings Association, as trustee, said indenture conveying to said trustee all the fee and leasehold property of the company, together with all buildings, improvements, plants and structures then or thereafter placed or constructed upon the real property. Said indenture likewise contains the identical additional provisions embodied in the Union bond indenture above stated.

11. Attached to this Agreed Statement of the Case, marked Exhibit A and made a part hereof is a copy of the letter dated June 4, 1936, mailed by Consolidated to all known holders of Consumers bonds shortly after the Consumers Committee had filed its plan calling for a separation of the Consumers properties for the sole benefit of Consumers bondholders. The "Consolidated plan" referred to in said letter is a plan which had been theretofore filed by Consolidated without the approval of either the Consumers Committee or the Union Committee. It was later abandoned and is not elsewhere referred to in this Agreed Statement of the Case.

[EXHIBIT A.]

CONSOLIDATED ROCK PRODUCTS CO.
LOS ANGELES, CALIF.Telephone
ADams 3111General Offices
2730 South Alameda Street
June 4, 1936.

To the Bondholders of Consumers Rock & Gravel Company, Inc.:

You are respectfully requested to read this letter fully and carefully. It is as brief as the importance of the matter will permit.

Under date of February 1st, 1936, we wrote you asking that you take no steps which would preclude you from approving a plan presented by the company. We also advised you that we would send a copy of the Consolidated plan for your approval after it was filed. It is enclosed herewith.

The Consolidated plan was filed on April 8th of this year. It was not sent to you out of deference to the Consumers Bondholders' Committee in the hope that that committee would be agreeable to a discussion of re-organization of the company as a unit. However, that has not resulted and under date of May 1st, 1936, that committee sent you an outline of the Consolidated plan, criticized it and stated that a plan would soon be presented by the committee which would better protect your interests. That plan was filed on June 1st, 1936. In brief it provides as follows:

- (1) That the properties of Consumers will be segregated and separated from Consolidated.

- (2) That a new corporation will be organized to take over the present assets of Consumers.
- (3) That the new corporation will issue new general mortgage, 5% income bonds in the amount of \$1,200,500.00 and 4801 shares of capital stock without par value.
- (4) That the new bonds will be issued to the present bondholders of Consumers par for par.
- (5) That 2401 shares of the new stock will be issued to voting trustees for the benefit of the holders of the new bonds. The voting trustees will be the present members of the Consumers Bondholders' Committee.
- (6) That 2400 shares of the new stock may be issued to provide working capital "or in connection with any employment contract or contracts which may be entered into between the new corporation and such person or persons as shall undertake the general management thereof."
- (7) The 5% interest on the bonds shall be non-cumulative for approximately four and one-half years and the interest shall only be paid if earned.
- (8) Working capital up to \$250,000.00 shall be provided either through enforcement of the alleged liability of Consolidated to Consumers under the operating agreement or through borrowings which may be secured by a lien prior to that securing the new bonds.

Before we comment on this plan we deem it advisable to give you a brief background of the consolidation. Consolidated was organized in 1929. Its preferred and common stock were sold to the public. It acquired all of the outstanding stock of Consumers Rock & Gravel Company, Inc., Union Rock Company, and Reliance Rock Company, all Delaware corporations. The then stockholders of Consumers were paid \$3,600,000.00 in cash for their stock. The Consumers assets were then subject to your bond issue of approximately \$1,500,000.00. The purpose of the consolidation was to consolidate these three major companies under one operating unit. The expected result was the elimination of duplications in overhead and the elimination of what had then been cut-throat competition between these companies. The stockholders of Consolidated put some eight or ten million dollars into Consolidated stock. The stock market crash occurred within a few months after the consolidation was completed. Since that time and continuously up to the middle of 1935, the volume of available tonnage has declined rapidly. The common stockholders of Consolidated have never received a dividend. The preferred stockholders' dividends ceased in June 1930. Consolidated continued to pay interest and sinking fund requirements on your bonds until January, of 1934. Since the consolidation, Consolidated has retired \$299,500.00 of Consumers bonds in addition to the interest payments. Had it not been for the consolidation and the money of the Consolidated stockholders, your bonds would have been in default in 1930. Any unbiased person familiar with this business will confirm this statement. For the three months of 1929 preceding the consolidation Consumers' income tax return showed a net loss, before bond interest, of \$84,500.00.

When the volume of business was continually decreasing it became necessary to temporarily abandon certain plants and concentrate operation on others. Statements may have been made to you that the Consumers plants have been operated and kept up continuously while the Union had not, and that the reason for so doing was that the Consumers plants were more valuable. It is true that more of the major plants of Consumers were operating. However, the reason is simple and sound. The major Consumers plants, with one exception, are on leased properties which require the payment of large minimum rents and royalties. Many of the Union plants are on property owned in fee where the only carrying charges are taxes. Obviously the Consumers plants—where minimum royalties had to be paid—were the ones to be operated. This was done and accounts for the fact that during the bottom of the depression the Consumers plants were more actively in operation and sold more tonnage than the Union. With the up-turn in business, which started in the middle of 1935 and has since continued, Union plants are now being revamped and placed in active operation. In the past three months two of these have been completely overhauled and are now actively operating. The operation of the Consumers plants during the low period did not impair your security. There is sufficient rock, sand and gravel on these properties to last indefinitely. The plants have been well maintained and it is indisputable that they could not have all been maintained and operated had Consumers not been a part of Consolidated.

We request that you carefully consider the following comments with respect to the Committee's plan:

- (1) This would mean a breaking down of the present consolidation into two or perhaps even three companies.

The net result of that would be an immediate and long drawn out competitive war for volume of business at any price. Competition in the rock, sand and gravel business is perhaps its greatest problem. The companies as a unit can meet competition with a united front and obviously with greatly reduced operating costs over the operating costs of the same properties operated as two or three separate units. In this connection it can safely be said that the operating costs and the minimum rents and royalties of Consolidated today are as low as it is possible to get them; are consistent with today's economic conditions; are on an advantageous basis with competitors, and will enable the company to operate on a profitable basis with a return of anything like normal business volume.

A 50% reduction in minimum rents and royalties in two of the major leases of Consumers was conditioned upon the reorganization of Consolidated as a unit.

(2) Working capital will have to be obtained by borrowing and will be secured by a lien prior to yours. In the Committee's plan it is stated that working capital may be obtained from Consolidated as a result of an alleged operating agreement. We state flatly that the required working capital cannot be so obtained. Consolidated will vigorously oppose any segregation of properties and any payment to Consumers, and if a contest were started on this alleged obligation there would be little, if any, cash or assets in Consolidated when the litigation terminated.

(3) Segregation is practically impossible. Parts of Consumers', Union's and Consolidated's properties have been combined and the whole organization has been operated as one unit. For example, many of the trucks con-

sist of parts which belong to each of the companies. The same thing is true of all of the plants. Before the properties could be segregated expensive experts and accountants would have to be employed, extensive litigation would take place not only between Consumers and Consolidated, but also between Consumers and Union. While this proceeding goes on, the business of the companies would be jeopardized, its plants would not be properly and adequately maintained, and the interests of all parties would be directed against each other instead of their being back-to-back in an effort to realize a profitable reorganization for all interests concerned.

(4) The only way that you can obtain income on whatever securities are issued to you is from profits of operation. In this highly competitive business and in these difficult times, it is inconceivable that Consumers with a separate overhead and in competition with Union and Consolidated could make the profits which it could make as a part of one organization. With the reductions in rents and royalties and operating charges which have already been obtained; with still further reductions which will result from reorganization, and with the continued increase in volume of business, it seems indisputable that you as bondholders will be better off keeping the company together as a unit than you will be if it is segregated into separate organizations.

(5) Of the three members of the committee which makes this recommendation and signs the plan of reorganization, two are former officers and owners of the

stock of Consumers which was sold to Consolidated for \$3,600,000.00. It is possible that their recommendations may be more to the interests of the former owners of Consumers than to your interests as bondholders. In this connection it is interesting to note that under the committee's recommendation, half of the common stock may be used for a management contract, while the other half is under the control of voting trustees, who are the same members of this committee. Further in this connection, it is certain that the former owners of Consumers will be the new management and controlling elements in the new Consumers. It is quite possible that under a management contract this same group will have half the new stock and will use a part of the \$3,600,000.00 obtained from Consolidated stockholders to furnish the working capital for the new proposed corporation, which in turn will be secured by a lien ahead of your bonds. It is also possible—and we advise you to inquire into it—that this same group has a substantial holding of Consumers' bonds which it has acquired at perhaps a fraction of what your bonds cost you.

We will not burden you with a detailed outline of the Consolidated plan or its benefits to you. The directors in formulating this plan endeavored to work out one which was fair to you, to the Union bondholders and to Consolidated stockholders. It can be called a stockholders' plan. The stockholders did put millions of dollars into the company; their money was used to support your bonds and pay interest thereon; they do have very valuable assets

which are unencumbered and these factors must be recognized.

The Union bondholders' committee has been open-minded and fair in its position concerning re-organization. It has not taken an arbitrary attitude—as has the Consumers committee—that no unified plan could be agreeable. It has been willing to let independent experts determine any differences in value between Union and Consumers bonds.

We feel that the Consolidated plan is fair and equitable to all parties. It keeps the companies together as one unit and gives the present bondholders a preferred position in all of the assets. There may be changes in it which should be made, but there are certain fundamental factors which must be recognized. They are: (1) the companies must be kept as one unit; (2) the present bondholders are entitled to a preference; (3) the new financial structure must be one which is economically sound; (4) the present stockholders have to be given a chance to recover at least part of their investment; (5) neither your interests nor those of the present stockholders should be jeopardized to benefit the individual interests of anyone; and (6) the company must be reorganized as soon as possible so that the attention of the officers and directors can be directed toward earnings.

In closing we respectfully urge that you do not give any approval or consent to the committee's plan of segregation. It is our belief that the members of this commit-

tee have been guided in their conclusions by the recommendations of the former owners of Consumers. You have their recommendations and now you have ours. We believe their recommendations are prejudiced by personal motives. You may feel that ours are colored by a stockholders view point. We would like to ask that in your own interests you present the Consolidated plan, the Consumers' committee plan and this letter to any unbiased individual familiar with this business. We feel satisfied that he will tell you that the companies should be reorganized as a unit; that reorganization should be completed as quickly and inexpensively as possible; that if you can get the expenses of reorganization and working capital furnished without assessing you or subrogating your position, you should do so and that you should not become embroiled in expensive and drawn out litigation which inevitably would follow if you approve the plan of this committee. It would be to your interest to advise that committee of your complete disapproval of such a plan.

Very respectfully yours,

Robt. Mitchell, Secretary

By Order of the Board of Directors.

P. S.: Please feel free to call upon any officer of the company for any information you desire.

12. It was stipulated before the Special Master that the copies of the Operating Agreements of July 15, 1929, and February 16, 1933, attached to the written objections of E. Blois duBois on file (and to the Special Master's Report) are true copies of the original agreements between the corporations named therein, and the same were received in evidence. (See pages 160 and 176, supra.)

13. Subsequent to the filing of the Report of the Special Master, and prior to the entry on September 8, 1938, of the Order of Confirmation herein, motion was made by the objector, E. Blois duBois, to reopen the hearing to permit the court to consider the improved condition of the Debtor and its subsidiaries. Said motion was heard by the court on August 1, 1938, approximately nine months after hearing before the Special Master. At that time counsel for said duBois offered in evidence in support of the motion to reopen: (1) the petition of Consolidated filed with the court under date of July 21, 1938, praying authority to discharge a certain mortgage indebtedness of \$18,000, said petition reciting among other things that the corporation had on hand cash in excess of \$250,000, that it was in such condition as to enable it to take advantage of all trade discounts, that it was paying all current creditors, and that it had no obligations other than current bills not due, bonds excepted; and (2) the statement of assets and liabilities and revenues and expenses for the period ended July 1, 1938, filed with the court by Consolidated, a complete copy of which is attached hereto, marked Exhibit B and made a part hereof.

EXHIBIT B.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA CENTRAL DIVISION

-o0o-

In the Matter)	
of	)	In proceedings for
CONSOLIDATED ROCK	)	the Reorganization
PRODUCTS CO. a Dela-	)	of a Corporation
ware Corporation)	
Debtor	)	No. 25816-H

STATEMENT OF ASSETS AND LIABILITIES
AND REVENUES AND EXPENSES FOR THE
PERIOD ENDED JUNE 30, 1938.

Pursuant to the order of the Court in the above entitled matter dated July 2nd, 1935, and particularly subdivision 7 thereof, there is attached hereto as Exhibit A and made a part hereof, a statement of the assets and liabilities of the debtor as at June 30, 1938, together with a summary statement of the revenues and expenses of the debtor for the month of June, 1938, and for the six months ended June 30, 1938.

Respectfully submitted,

CONSOLIDATED ROCK PRODUCTS CO.

By

Robt. Mitchell

Vice-President

Dated July 20, 1938

ASSETS

Current:

Cash in banks and on hand	\$ 311,916.50
Accounts and notes receivable, trade (\$506,319.81), rents, claims, and other (\$9,937.00), net after provision for bad debt losses and discounts (\$105,008.49)	411,248.32
Inventories of rock, sand, gravel (at basic cost rates established in 1932) and building materials at lower of cost or market	99,307.16
Prepaid items, including insurance and taxes (\$27,580.28), and operating supplies (\$78,084.55)	105,664.83
Total Current Assets	\$ 928,136.81

Interest in net worth of controlled company	33,966.88
Properties, consisting of lands, deposits, plants, structures, and machinery and equipment (including automotive equipment) at values authorized by the Board of Directors of the parent company and made effective October 1, 1931, plus subsequent additions at cost, less provisions for depreciation and depletion	2,560,728.51
Rock and gravel deposits held on lease, at nominal reappraised values of October 1, 1931	1.00

Other Assets:

Held by trustees under bond indentures, cash (\$21,770.70) and notes from controlled company (\$5,600.00)	\$ 27,370.70
Deferred charges applicable to future periods	6,498.62
Insurance and other deposits	12,904.98
Bonds held by subsidiary company, at cost	4,625.00
Sundry stocks and bonds at approximately 25% of cost, value unknown	9,411.93
Unamortized bond discount and expense	117,944.39
Reorganization expense	22,149.33
	200,904.95

Total Assets

\$3,723,738.15

PRODUCTS CO.
(Delaware)
Sole subsidiary companies
BALANCE SHEET
1938

LIABILITIES

Current accounts payable (\$193,267.98), accrued items (78,733.25), & miscellaneous (7,905.57), other than bond interest.		\$ 279,906.80
Purchase money obligations (on a bunker site, gravel deposit motor trucks, tires and insurance):		
Past due, payments extended by agreement	\$ 9,000.00	
Payable during 1938	38,036.70	
Payable subsequent to 1938	20,338.41	67,375.11
Accrued interest on bonds (see accompanying Balance Sheet for details of defaults):		
Union Rock Company, from September 1, 1933	\$547,036.68	
Consumers Rock & Gravel Company, Inc., from June 25, -1934	306,990.00	854,026.68
Public improvements assessment bonds		326.92
Rentals received in advance		603.66
General provision for sundry unascertained lia- bilities		36,985.24
Funded debt (see accompanying balance sheets for details of defaults):		
Union Rock Company, first mortgage 6% serial and sinking fund (gold) bonds, authorized \$5,000,000.00, issued \$2,500,- 000.00, retired \$520,500.00, purchased and held in the treasury \$102,500.00:		
Outstanding: Matured September 1, 1933 to September 1, 1937	\$ 273,000.00	
Maturing September 1, 1938	54,000.00	
Maturing 1937 to 1947	1,550,000.00	
	\$1,877,000.00	
Consumers Rock & Gravel Company, Inc., first mortgage sinking fund (gold) bonds, authorized \$2,500,000.00, issued \$1,500,000.00, retires. \$299,500.00, pur- chased and held in treasury \$63,500.00:		
Outstanding, maturing July 1, 1948	1,137,000.00	3,014,000.00
		\$4,253,224.41

CAPITAL AND SURPLUS

Capital Stock:		
Preferred stock, cumulative, participating, \$1.75 dividend, no par, liquidating value \$25.00 per share, 300,000 shares au- thorized, 285,947 shares outstanding	\$1,800,000.00	
NOTE: Cumulative dividends unpaid since May 30, 1930	\$4,044,958.58	
Common Stock, no par, 700,000 shares au- thorized 397,455 shares outstanding	1.00	
	\$1,800,001.00	
Operating deficit (*) from October 1, 1931, less \$18,912.38 paid-in surplus	2,329,487.26*	529,486.26*
Total Liabilities, Capital and Surplus		\$3,723,738.15

*) Deficit.

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CONSOLIDATED ROCK PRODUCTS CO.

(Incorporated in Delaware)

And its wholly owned subsidiaries

CONSOLIDATED INCOME ACCOUNT

For the five months ended June 30, 1938

	<u>JUNE</u>	<u>YEAR TO DATE</u>
Sales, net of discounts and allowances	\$379,010.98	\$1,711,402.71
Cost of sales, plus selling and administrative expense, but without depreciation and deple- tion deducted below	<u>328,871.34</u>	<u>1,526,974.87</u>
Operating profit before deducting depre- ciation and depletion	\$ 50,139.64	\$ 184,427.84
Other income, net	<u>4,124.58</u>	<u>11,232.93</u>
Net income before bond interest, depreciation, depletion and amortization, deducted below	\$ 54,264.22	\$ 195,660.77
Deduct interest expense on bonds of subsidiaries	<u>15,116.67</u>	<u>90,700.02</u>
Net profit before depreciation, depletion and amortization	\$ 39,147.55	\$ 104,960.75
Provision for depreciation and depletion of prop- erty, computed on reappraised values made effective October 1, 1931, and on cost of additions subsequent thereto	<u>12,639.69</u>	<u>72,553.37</u>
	\$ 26,507.86	\$ 32,407.38
Amortization of bond discount and expense	<u>1,192.00</u>	<u>7,152.00</u>
NET PROFIT	<u>\$ 25,315.86</u>	<u>\$ 25,255.38</u>

CONSOLIDATED ROCK PRODUCTS CO.
(Incorporated in Delaware)
BALANCE SHEET
As at June 30, 1938

<u>ASSETS</u>		<u>LIABILITIES</u>	
Current:		Accounts payable, trade	\$ 193,267.98
Cash in banks and on hand	\$ 303,056.55	Accrued liabilities:	
Receivables, net of reserves:		Salaries and wages	\$34,562.92
Trade accounts	\$ 385,193.43	Taxes:	
Sundry accounts	8,986.82	Sales (State)	\$15,789.79
Sundry notes	17,068.07	Social Security	15,098.13
	411,248.32	Other	788.85
Inventories of rock, sand, and gravel (at basic cost rates established in 1932) and building materials at lower of cost or market	99,307.16	Other accrued items, including compensation insurance (\$7,397.52)	7,687.14
Inventories of operating and automotive supplies at cost	78,084.55		39,363.91
Prepaid insurance, taxes and license fees	27,580.28		73,926.83
	\$ 919,276.86	Other accounts payable	7,905.57
Investments in subsidiary companies:		Public improvement assessment bonds (payable in 1938)	302.60
Principal amount of bonds:		Installment contracts for trucks, truck tires and insurance	35,375.11
Consumers Rock & Gravel Company, Inc.	\$ 63,500.00		\$ 310,778.09
Union Rock Company	102,500.00	General provisions for sundry unascertained liabilities	36,985.24
Capital stock	\$4,627,134.36	Revenues received in advance	603.66
Deduct: diminution applicable to property values shown by books of subsidiaries (as indicated through values authorized by Board of Directors of Consolidated Rock Products Co., October 1, 1931) less subsequent depreciation applicable thereto	934,517.00	Current accounts with subsidiaries (not including credits for depreciation, depletion, and amortization, see below), due upon termination of operating agreement	842,710.18
	3,692,617.36	Accumulated depreciation, depletion and amortization on subsidiary companies' properties from April 1, 1929, to June 30, 1938, computed on values shown by books of subsidiaries	5,065,399.81
Current accounts (not including credits for depreciation, depletion, and amortization of subsidiaries' properties, see contra) due upon termination of operating agreement	586,111.62		\$6,256,476.98
	4,444,728.98		
Interest receivable accrued on bonds of subsidiaries held in treasury	46,918.32		
Properties, consisting of lands, deposits, plants, structures, and machinery and equipment (including automotive equipment \$242,634.27) at values authorized October 1, 1931, by the Board of Directors, plus subsequent additions at cost, less provision for depreciation (\$254,476.80)	271,503.82		
Deposits held on lease, at nominal reappraisal value of October 1, 1931	1.00		
Other Assets:			
Insurance and other deposits	\$12,904.98		
Deferred charges applicable to subsequent periods	5,095.50		
Sundry stocks and bonds at approximately 25% of cost, value unknown	4,411.93		
Reorganization expense	22,149.33		
	44,561.74		
	\$5,726,990.72		

Value of investments as stated is equal to the net worth as per books of subsidiary companies after the eliminations of any recorded goodwill.

(*) Deficit.

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CONSUMERS ROCK & GRAVEL COMPANY, INC.,
(Incorporated in Delaware)

BALANCE SHEET
As at June 30, 1938

ASSETS & DEBIT ITEMS

Property:

Land, rock deposits, and leaseholds	\$1,530,129.15
Plants, structures, machinery and equipment	2,309,984.72
Automobiles, trucks and trailers	309,198.18
	<hr/>
	\$4,149,312.05

Less: provision for depreciation & depletion	2,764,258.83
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Net book value of property \$1,385,053.22

Interest in net worth of affiliated companies:

Saticoy Rock Company (\$33,966.88)	
Atlas Mixed Mortar Co. (467.39)*	33,499.49

Other Assets:

Bond redemption, cash funds and notes receivable in hands of bond trustee	11,737.00
Prepaid rents	183.46
Unamortized bond discount and expense	42,069.29

Current account with parent company (not including debits for depreciation and depletion of properties, see below)	119,409.50
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Accumulated depreciation and depletion of properties from April 1, 1929 to June 30, 1938, (computed upon book value of property)	1,976,358.25
	<hr/>
	\$3,568,310.21
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LIABILITIES

Rents and royalties accrued	\$ 2,444.56
Accrued interest on bonds (see footnote for details of defaults)	324,135.00
First mortgage sinking fund (gold) bonds, (see footnote for details of defaults):	
Authorized \$2,500,000.00, issued \$1,500,000.00; retired \$299,500.00, outstanding & maturing July 1, 1948 (\$63,500.00 owned by parent company)	1,200,560.00
	<u>\$1,527,079.56</u>

CAPITAL AND SURPLUS

Capital stock:

Common, authorized 150,000 shares, no par, outstanding 120,328 shares	\$1,516,891.51	
Earned surplus	20,331.15	
Surplus by revaluation of properties	504,007.99	2,041,230.65
		<u><u>\$3,568,310.21</u></u>

Defaults by failure to make sinking fund deposits required under Consumers Bond Indenture:

Deposit Dates	For Interest			Total Defaults
	Net Outstanding	Owned by Parent Company	For Bond Redemption	
6-25-34	\$ 34,110.00	\$ 1,905.00	\$ 8,985.00	\$ 45,000.00
12-26-34	34,110.00	1,905.00	51,485.00	87,500.00
6-25-35	34,110.00	1,905.00	8,985.00	45,000.00
12-26-35	34,110.00	1,905.00	51,485.00	87,500.00
6-25-36	34,110.00	1,905.00	8,985.00	45,000.00
12-26-36	34,110.00	1,905.00	51,485.00	87,500.00
6-25-37	34,110.00	1,905.00	8,985.00	45,000.00
12-26-37	34,110.00	1,905.00	51,485.00	87,500.00
6-25-38	34,110.00	1,905.00	8,985.00	45,000.00
	<u>\$306,990.00</u>	<u>\$17,145.00</u>	<u>\$250,865.00</u>	<u>\$575,000.00</u>

NOTE: Consumers Rock & Gravel Company, Inc., is a wholly owned subsidiary of Consolidated Rock Products Co.

(*) Deficit.

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UNION ROCK COMPANY
(Incorporated in Delaware)
And its wholly owned subsidiaries
Consolidated Balance Sheets as at June 30, 1938

ASSETS AND DEBIT ITEMS

	Consolidated	Eliminations in Consolidating	Union Rock Company	Union Rock Land Company	Reliance Rock Company	Builders C.R.P.Co.	Orange County Rock Corp'n
Property:							
Land, rock deposits, and leaseholds	\$2,207,459.55		\$1,645,044.60	\$377,454.39	\$159,960.56	\$ 25,000.00	
Plants, structures, machinery and equipment	3,377,980.81		2,385,698.49	28,713.67	767,913.96	195,654.69	
Automobiles, trucks and trailers	296,219.88		140,780.92	139,037.98	1,638.20	14,762.78	
	\$5,881,660.24		\$4,171,524.01	\$545,206.04	\$929,512.72	\$235,417.47	
Less: provision for depreciation, depletion and amortization	4,208,525.95		3,025,610.57	186,447.64	767,581.59	228,886.15	
Net book value of property	\$1,673,134.29		\$1,145,913.44	\$358,758.40	\$161,931.13	\$ 6,531.32	
Investment in stock of subsidiary companies		\$1,049,834.69	\$ 907,554.31	\$142,280.38			
Investment in stock of Sunset Rock Products Company (40%, at cost)	\$ 149,956.80			\$149,956.80			
Other Assets:							
Cash in Bank	8,859.95			8,356.20			\$502.75
Bond redemption and special funds in hands of trustees	15,633.70		\$ 15,633.70				
Sundry stocks and bonds, at cost, value unknown	9,625.00			9,625.00			
Prepaid rents and royalties	1,219.66		349.14		808.02		62.50
Unamortized bond discount and expense	75,875.10		75,875.10				
	\$ 261,170.21		\$ 91,857.94	\$167,938.00	\$ 808.02		\$566.25
Current account with parent company (not including debts for depreciation, depletion, and amortization of properties (see below,) due upon termination of operating agreement)	\$ 719,664.49		\$ 719,522.31			\$ 142.18	
Accumulated depreciation, depletion, and amortization of properties from April 1, 1929, to June 30, 1938 (computed upon cost of properties)	2,870,451.40		2,092,881.10	\$158,519.47	\$482,610.62	136,440.21	
Total Assets and Debit Items	\$5,524,420.39	\$1,049,834.69	\$4,957,729.10	\$827,496.25	\$645,349.77	\$143,113.71	\$566.25

LIABILITIES

Rents and royalties accrued	\$ 1,721.18		\$ 871.19			\$ 833.33	\$ 16.66
Interest payable accrued	215.68		116.68	\$ 99.00			
Purchase money obligations (on bunker site and gravel deposit):							
Past due, payments extended by agreement	\$ 9,000.00						
Payable during 1938	5,500.00						
Payable after 1938	17,500.00	32,000.00	14,000.00	18,000.00			
Accrued interest on bonds (see footnote for detail of defaults)	576,810.00		576,810.00				
Funded debt (see footnote for defaults):							
First mortgage, 6%, serial and sinking fund (gold) bonds, authorized \$5,000,000.00, issued \$2,500,000.00, retired, \$520,500.00; Outstanding (of which \$102,500.00 is owned by parent company):							
Matured September 1, 1933 to September 1, 1937	\$ 281,000.00						
Maturing September 1, 1938	54,000.00						
Maturing 1939 to 1947	1,644,500.00	1,979,500.00	1,979,500.00				
Current account with parent company (not including debits for depreciation, depletion and amortization of properties, see contra), due upon termination of operating agreement.	547,742.30			450,714.95	\$ 96,781.51		\$ 45.84
Total Liabilities	\$3,137,989.16		\$2,571,297.87	\$468,813.95	\$ 96,981.51	\$ 833.33	\$ 62.50

CAPITAL AND SURPLUS

Capital Stock:							
Class A stock, no par, \$1.75 dividend, 160,000 shares authorized and outstanding	\$ 705,656.92		\$ 705,656.02				
Class B stock, no par, \$1.00 dividend, 400,000 shares authorized and outstanding	1,705,124.53		1,705,124.53				
Common stock, par \$100.00 per share							
Surplus:		\$1,062,400.00		\$364,700.00	\$500,000.00	\$197,200.00	\$500.00
Earned surplus or deficit*	24,350.22*	2,475.31*	24,350.22*	6,017.70*	48,368.26	74,829.62*	3.75
Paid-in surplus		19,910.00				19,910.00	
Total Capital and Surplus	\$2,384,431.23	\$1,049,834.69	\$2,386,431.23	\$358,682.30	\$548,368.26	\$142,280.38	\$503.75
Total Liabilities, Capital and Surplus	\$5,524,420.39	\$1,049,834.69	\$4,957,729.10	\$827,496.25	\$645,349.77	\$143,113.71	\$566.25

Defaults by failure to make sinking fund deposits required under Union Bond^o indenture:

Deposit Dates	For Serial Maturities		For Interest			Total Defaults
	Net Outstanding	Owned by Parent Company	On net Outstanding	On bonds owned by parent Company	For Bond Redemption	
8-25-33	\$ 56,000.00	\$1,000.00			\$ 21,515.00	\$ 78,515.00 #
2-25-34			\$ 56,310.00	3,075.00	20,615.00	80,000.00
8-25-34	59,000.00		56,310.00	3,075.00	21,615.00	140,000.00
2-25-35			56,310.00	3,075.00	20,615.00	80,000.00
8-25-35	50,000.00		56,310.00	3,075.00		
2-25-36						

Payable after 1938

Accrued interest on bonds (see footnote for detail of defaults)	576,810.00	576,810.00				
Funded debt (see footnote for defaults):						
First mortgage, 6%, serial and sinking fund (gold) bonds, authorized \$5,000,000.00, issued \$2,500,000.00, retires \$520,500.00; Outstanding (of which \$102,500.00 is owned by parent company):						
Matured September 1, 1933 to September 1, 1937	\$ 281,000.00					
Maturing September 1, 1938	54,000.00					
Maturing 1939 to 1947	1,644,500.00	1,979,500.00	1,979,500.00			
Current account with parent company (not including debits for depreciation, depletion and amortization of properties, see contra), due upon termination of operating agreement	547,742.30			450,714.95	\$ 96,981.51	\$ 45.84
Total Liabilities	\$3,137,989.16	\$2,571,297.87	\$468,813.95	\$ 96,981.51	\$ 833.33	\$ 62.50

CAPITAL AND SURPLUS

Capital Stock:						
Class A stock, no par, \$1.75 dividend, 320,000 shares authorized and outstanding	\$ 705,656.92	\$ 705,656.02				
Class B stock, no par, \$1.00 dividend, 400,000 shares authorized and outstanding	1,705,124.53	1,705,124.53				
Common stock, par \$100.00 per share						
Surplus:						
Earned surplus or deficit*	24,350.22*	\$1,062,400.00 32,475.31* 19,910.00	24,350.22*	\$364,700.00 6,017.70*	\$500,000.00 48,368.26	\$197,200.00 74,829.62* 19,910.00
Paid-in surplus						\$500.00 3.75
Total Capital and Surplus	\$2,386,431.23	\$1,049,834.69	\$2,386,431.23	\$358,682.30	\$548,368.26	\$142,280.38 \$503.75
Total Liabilities, Capital and Surplus	\$5,524,420.39	\$1,049,834.69	\$4,957,729.10	\$827,496.25	\$645,349.77	\$143,113.71 \$566.25

Defaults by failure to make sinking fund deposits required under Union Bond indenture:

Deposit Dates	For Serial Maturities		For Interest			Total Defaults
	Net Outstanding	Owned by Parent Company	On net Outstanding	On bonds owned by parent Company	For Bond Redemption	
8-25-33	\$ 56,000.00	\$1,000.00			\$ 21,515.00	\$ 78,515.00#
2-25-34			\$ 56,310.00	3,075.00	20,615.00	80,000.00
8-25-34	59,000.00		56,310.00	3,075.00	21,615.00	140,000.00
2-25-35			56,310.00	3,075.00	20,615.00	80,000.00
8-25-35	50,000.00		56,310.00	3,075.00	30,615.00	140,000.00
2-25-36			56,310.00	3,075.00	20,615.00	80,000.00
8-25-36	58,000.00	2,000.00	56,310.00	3,075.00	20,615.00	140,000.00
2-25-37			56,310.00	3,075.00	20,615.00	80,000.00
8-25-37	52,000.00	5,000.00	56,310.00	3,075.00	23,615.00	140,000.00
2-25-38			56,310.00	3,075.00	20,615.00	80,000.00
	\$275,000.00	\$8000.00	\$506,790.00	\$27,675.00	\$221,050.00	\$1,038,515.00

NOTE: (1). Capital Stock of Orange County Rock Corporation is pledged under trust indenture securing bonds of Union Rock Company.

(2). The Union Rock Company is a wholly owned subsidiary of Consolidated Rock Products Company.

(#). The interest requirement (\$61,485.00) of the \$140,000.00 deposit requirement for August 25, 1933, was not defaulted.

(*) Deficit.

14. The following documents were filed in the United States District Court in the above entitled proceeding on the dates hereinafter set forth, and may be deemed incorporated in this Agreed Statement of the Case. Said documents, made a part hereof by reference, may be prepared by the clerk of said court and forwarded to the Circuit Court of Appeals with and as a part of this Agreed Statement of the Case:

- (a) Petition of Debtor, Union Committee and Consumers Committee, filed April 23, 1937, submitting plan of reorganization dated March 15, 1937, including the following exhibits thereto: said plan of reorganization (Exhibit A thereto), the letter from Union Committee to depositors of Union bonds (Exhibit B), summary of said plan of reorganization (Exhibit C), the letter from Consumers Committee to depositors of Consumers bonds (Exhibit G), and the letter from Consolidated to its stockholders (Exhibit L):
- (b) Petition filed October 1, 1937, for hearing upon proposal, consideration and confirmation of said plan of reorganization dated March 15, 1937;
- (c) Objections filed August 25, 1937, by E. Blois duBois to said plan of reorganization, omitting Operating Agreements dated July 15, 1929, and February 16, 1933, attached thereto;
- (d) Supplemental objections filed October 21, 1937, by said duBois to said plan of reorganization;
- (e) Findings and Report of Frank P. Doherty, Special Master, filed February 14, 1938, including exhibits attached thereto;

- (f) Exceptions of said duBois, filed March 4, 1938, to said report of Special Master;
- (g) Supplemental exceptions of said duBois, filed March 5, 1938, to said report of Special Master;
- (h) Motion of said duBois, filed July 22, 1938, for reopening of hearing on said plan of reorganization;
- (i) Affidavit filed July 22, 1938, in support of said motion of duBois to reopen said hearing on said plan;
- (j) Motion filed by Preferred Stockholders' Committee on August 5, 1938, to dismiss motion to reopen hearing on confirmation of said plan;
- (k) Minute order of August 5, 1938, denying said motion to reopen said hearing on said plan;
- (l) Memorandum of decision by Judge Harry A. Hollzer filed August 8, 1938;
- (m) Findings and order of court, entered September 8, 1938, confirming said plan of reorganization;
- (n) Petition for leave to appeal, filed with United States District Court on October 4, 1938;
- (o) Order of United States District Court allowing appeal, entered October 4, 1938;
- (p) Citation issued by United States District Court on October 4, 1938, on appeal, and acknowledgment of service of same;

- (q) Cost bond on appeal;
- (r) Petition for leave to appeal filed with Clerk of Circuit Court of Appeals on October 8, 1938;
- (s) Assignment of errors filed with Clerk of Circuit Court of Appeals on October 8, 1938;
- (t) Citation on Appeal issued on October 10, 1938, by Circuit Court of Appeals and acknowledgment of service thereof;
- (u) Order of Circuit Court of Appeals allowing appeal, entered October 10, 1938;
- (v) Notice of appeal filed October 8, 1938;
- (w) Any and all orders hereafter made enlarging time in which to file Transcript of Record on appeal.

15. The appellant, E. Blois duBois, has appealed from the order entered September 8, 1938, confirming the Plan of Reorganization, and relies upon each of the points enumerated in his Assignment of Errors, filed with the Circuit Court of Appeals, which is hereby made a part hereof.

16. It is stipulated that the foregoing statement of evidence and proceedings, with those portions of the record specified in Paragraph 14 for inclusion as a part hereof, fully and fairly set forth all evidence taken and proceedings had which are essential to decision of the questions raised by the appeals herein.

Dated: December 16, 1938.

JOHN G. MOTT
PAUL VALLEE
KENNETH E. GRANT

By Kenneth E. Grant
Attorneys for Appellant.

O'MELVENY, TULLER & MYERS
HOMER I. MITCHELL
And Graham L. Sterling, Jr.

Attorneys for Appellees F. S. Badgley, Colonel R. E. Frith, T. Fenton Knight and Walter S. Taylor, composing the Union Rock Company Bondholders' Protective Committee.

GIBSON, DUNN & CRUTCHER
By T. H. Joyce

Attorneys for Appellees Wm. D. Courtright, Fred L. Dreher, F. J. Gay and Guy Witter, composing the Consumers Rock & Gravel Company, Inc. Bondholders' Protective Committee.

Stanley Arndt
Stanley Arndt

Attorney for Appellees Edward E. Hatch and Louis Van Gelder, composing the Preferred Stockholders' Committee of Consolidated Rock Products Co.

LATHAM, WATKINS & BOUCHARD
And Paul Watkins

Attorneys for Appellees Consolidated Rock Products Co., Union Rock Company and Consumers Rock & Gravel Company, Inc.

CERTIFICATE OF COURT
ON AGREED STATEMENT OF CASE

The undersigned, Harry A. Hollzer, Judge of the United States District Court for the Southern District of California, Central Division, hereby certifies that the foregoing statement of evidence and proceedings, together with those portions of the record specified in Paragraph 14 for inclusion as a part thereof, fully and fairly present all evidence taken and proceedings had before the Special Master and the Court which are essential to decision of the questions on appeal raised by the Assignment of Errors filed by appellant, E. Blois duBois, with the United States Circuit Court of Appeals for the Ninth Circuit, a copy of which is made a part of said statement.

Dated: December 17, 1938.

H. A. Hollzer
Judge.

[Endorsed]: Filed R. S. Zimmerman, Clerk, at 44 min.
past 9 o'clock. Dec 19, 1938 A. M. By M. J. Sommer,
Deputy Clerk.

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT

In the matter of	)	In Proceedings
CONSOLIDATED ROCK PROD-	)	for the
UCTS CO., a Delaware corporation,	)	Reorganization
	)	of a Corporation.
Debtor,)	
	)	No. 9000
UNION ROCK COMPANY, a cor-)	
poration,	)	PETITION
	)	FOR LEAVE
Subsidiary,	)	TO APPEAL
	)	TO THE
and	)	UNITED
	)	STATES CIR-
CONSUMERS ROCK & GRAVEL	)	CUIT COURT
COMPANY INC., a corporation,	)	OF APPEALS
Subsidiary,	)	FOR THE
	)	NINTH
District Court No. 25816-H.	)	CIRCUIT.

To the Honorable Judges of the United States Circuit
Court of Appeals for the Ninth Circuit:

E. Blois duBois, an objector of record to confirmation of the Plan of Reorganization of the above named debtor corporations submitted by Consolidated Rock Products Co., a corporation, Union Rock Company Bondholders' Protective Committee and Consumers Rock & Gravel Company Bondholders' Protective Committee, dated March 15, 1937, and the owner and holder of bonds of Union Rock Company in the principal amount of \$150,000.00 and of Consumers Rock & Gravel Company, Inc., in the principal amount of \$31,500.00, feeling himself aggrieved by the order and decree of the District Court of the United

States for the Southern District of California, Central Division, entered herein on the 8th day of September, 1938, by the Honorable Harry A. Hollzer, one of the judges of said court, denying the exceptions of said E. Blois duBois to the report of the Special Master herein, approving said report and confirming the aforesaid Plan of Reorganization of the above named debtor corporations, hereby petitions for leave to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from such order and decree, and the whole thereof, for the reasons set forth in petitioner's assignment of errors and brief filed herewith, reference to which is here made.

Petitioner prays that appeal to the United States Circuit Court of Appeals for the Ninth Circuit may be allowed him, that the amount of cost bond on appeal be fixed, that a citation be issued directed to Consolidated Rock Products Co., a corporation; F. B. Badgley, Colonel R. E. Frith, T. Fenton Knight and Walter S. Taylor, composing the Union Rock Company Bondholders' Protective Committee; Wm. D. Courtright, Fred L. Dreher, F. J. Gay and Guy Witter, composing the Consumers Rock and Gravel Company, Inc., Bondholders' Protective Committee; and Edward E. Hatch and Louis Van Gelder, composing the Preferred Stockholders Committee of Consolidated Rock Products Co., commanding them, and each of them, to appear before the said United States Circuit Court of Appeals for the Ninth Circuit to do and receive that which may appertain to justice in the premises, and that a transcript of the records, papers, proceedings, offers, stipulations and evidence upon which said order and decree was entered, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

Under separate cover petitioner for leave to appeal files herewith for consideration by the Court true copies of the following papers constituting a part of the record in these proceedings in the Trial Court:

- Exhibit A.....Findings and Order confirming Plan of Reorganization
- Exhibit B.....Findings and Report of Special Master
- Exhibit C.....Exceptions of Appellant to Findings and Report of Special Master
- Exhibit D.....Supplemental Exceptions of Appellant to Findings and Report of Special Master
- Exhibit E.....Appellant's Motion to Re-open Hearing
- Exhibit F.....Notice of Motion to Re-open Hearing, with supporting Affidavit attached.
- Exhibit G.....Trial Court's Memorandum of Conclusions
- Exhibit H.....Appellant's Objections to the Plan of Reorganization
- Exhibit I.....Appellant's Supplemental Objections to Plan of Reorganization
- Exhibit J.....Plan of Reorganization

Dated October 6, 1938.

E. ELOIS duBOIS

By his attorneys:

JOHN G. MOTT

(John G. Mott)

PAUL VALLEE

(Paul Vallee)

KENNETH E. GRANT

(Kenneth E. Grant)

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Katherine Spengler

(Endorsed) Petition for appeal. Filed Oct. 8, 1938.

Paul P. O'Brien, Clerk.

[TITLE OF CIRCUIT COURT OF APPEALS, AND CAUSE.]

ASSIGNMENT OF ERRORS.

Comes now E. BLOIS duBOIS, an objector of record to confirmation of the Plan of Reorganization of the above named debtor corporations submitted by Consolidated Rock Products Co., a corporation, Union Rock Company Bondholders' Protective Committee and Consumers Rock & Gravel Co. Bondholders' Protective Committee, dated March 15, 1937, and the owner and holder of bonds of Union Rock Company in the principal amount of \$150,000.00 and of Consumers Rock & Gravel Company, Inc., in the principal amount of \$31,500.00, and in support of his petition filed herewith praying leave to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain Order and Decree, and the whole thereof, entered herein September 8, 1938, confirming the said Plan of Reorganization submitted by the above named proponents, assigns error of the Court in the entry of said Decree of Confirmation, and in the proceedings herein, as follows:

I.

The Court erred in confirming the proposed Plan of Reorganization in that said Decree is contrary to law in depriving the dissenting bondholders of Union Rock Company and Consumers Rock & Gravel Company, Inc. of fifty per cent (50%) of the principal amount of the bonds held by them while permitting the preferred stockholders of Consolidated Rock Products Co., to participate and share in the reorganization without consideration.

II.

The Court erred in confirming the proposed Plan of Reorganization in that said Decree is contrary to law in depriving the dissenting bondholders of Union Rock Company and Consumers Rock & Gravel Company, Inc. of interest at the rate of six per cent (6%) per annum accrued and unpaid on the Union Rock Company bonds from September 1, 1933 and on the Consumers Rock & Gravel Company, Inc. bonds from June 25, 1934, while permitting the preferred stockholders of Consolidated Rock Products Co. to participate and share in the reorganization without consideration.

III.

The Court erred in confirming the proposed Plan of Reorganization in that said Decree is contrary to law in depriving the dissenting bondholders of Union Rock Company and Consumers Rock & Gravel Company, Inc. of their property interests in the real and personal property securing payment of said bonds without due process of law and for the benefit of the stockholders of Consolidated Rock Products Co.

IV.

The finding of the Court that the Plan of Reorganization is fair and equitable is not supported by substantial evidence.

V.

The Court erred in entering the Decree confirming the proposed Plan of Reorganization in that said Decree is inconsistent with the facts expressly found by the Court and by the Special Master to exist.

VI.

The Court erred in entering the Decree of confirmation cancelling all indebtedness of Consolidated Rock Products Co. to Union Rock Company and Consumers Rock & Gravel Company, Inc. and in said respect the Decree is contrary to law and equity.

VII.

The Court erred in failing and refusing to evaluate the interests of the respective parties to the proposed Plan of Reorganization, by independent appraisal, or otherwise, and in this respect the Decree is contrary to law and equity.

VIII.

The Court erred in failing and refusing to determine the validity of the operating agreement entered into between Consolidated Rock Products Co., Union Rock Company, Consumers Rock & Gravel Company, Inc. and Reliance Rock Company under date of February 16, 1933, purporting to modify the original operating agreement entered into by said companies under date of July 15, 1929, copies of which agreements are attached to the Special Master's Report as exhibits, and in this respect the Decree is contrary to law and equity.

IX.

The Court erred in failing and refusing to determine the amount of indebtedness owing by Consolidated Rock Products Co. to Union Rock Company and Consumers Rock & Gravel Company, Inc., and in this respect the Decree is contrary to law and equity.

X.

The Court erred in entering the Decree confirming the proposed Plan of Reorganization in that said Decree is not supported by substantial evidence.

XI.

The Court erred in denying appellant's Exception No. I to the Findings and Report of the Special Master, reading as follows:

"To that portion of the Findings captioned 'Subsequent Betterments and Additions to Equipment of Union Company and Consumers Company,' and to each and every part thereof, Master's Report, pages 21 and 22, reading as follows, commencing in line 10, page 21:

'The evidence shows that substantial sums were expended by Consolidated in the repair and maintenance of the properties of the Union Company, Consumers Company, and Reliance Company, and also that the trucks and automobiles and portions of the other equipment of the three above mentioned subsidiaries became unserviceable and worn out in the usual course of the operations in the carrying on of the business by Consolidated, and that equipment was purchased by Consolidated out of the funds and moneys of Consolidated to replace said worn out and unserviceable equipment and to purchase new and additional trucks and equipment and appliances. The evidence further shows that in some instances the trucks and automobiles which were worn out and unserviceable were turned in or delivered as a part payment on account of the new trucks and other equipment acquired by Consolidated; that such new and renewed equipment so purchased by Consolidated was necessary, proper, and essential to

the carrying on of the business of Consolidated and its subsidiaries; that the funds with which said new and additional equipment was purchased and paid for were supplied by Consolidated from the usual operating revenues of the properties of the Union Company, Consumers Company, and Reliance Company, and also from the properties of Consolidated, and also from proceeds received by Consolidated from the sale of its stock to the public. The evidence further shows that there was such commingling of said funds last hereinabove referred to as to make it impracticable, from an accounting or other standpoint, to determine the amount of money from either or all of the respective sources which was used to replace, renew, or purchase additional trucks, automobiles, and other appliances and equipment used by Consolidated in and about the business. It is therefore found that, assuming that the lien of the Trust Indentures of the Union Company and the Consumers Company pursued and attached to such new, renewed, and additional equipment so as to subject said trucks, automobiles, appliances, and other equipment to the lien of said Trust Indenture and as security for the bonds issued thereunder, it is both impracticable and, from an accounting standpoint, impossible to determine to what extent the equipment now owned and operated by Consolidated is a renewal, replacement, or substitution of such automobiles, trucks, appliances, and other equipment of the Union Company, the Consumers Company, and the Reliance Company, or is new equipment purchased by Consolidated for and on its own account from the proceeds resulting from the operation of the properties by Consolidated or from the funds received from the sale of Consolidated stock, and therefore not subject to the lien of said Trust Indentures, Special Master's Exhibits 12 and 13,"

said exception being based

“upon the fact that said specific findings are contrary to the evidence adduced before the Special Master showing: That funds used by Consolidated Rock Products Company for making repairs, subsequent betterments and additions to the equipment and properties of Union Rock Company and Consumer's Rock & Gravel Company included funds taken over by Consolidated Rock Products Company from the subsidiaries at the time of the so-called consolidation, or commencement of joint operation, as well as from operation and exploitation thereafter of the properties of the subsidiaries, and that pursuant to the covenants of the original operating agreement of July 15, 1929 full and complete books of account were kept showing the charges for such improvements and betterments against the respective companies, and that no such confusion of assets has resulted that definite determination as to what properties belong to the respective companies, the true valuation thereof, and to what liens such assets may be subject, cannot be determined.”

Denial of the above exception was contrary to law and the evidence.

XII.

The Court erred in denying appellant's Exception No. II to the Findings and Report of the Special Master, reading as follows:

“To that portion of the Findings captioned ‘Plan is Fair and Has been Approved by Required Percentage of Bondholders and Stockholders,’ Master's Report, page 25,

finding the Plan of Reorganization to be fair to the bondholders of Union Rock Company and/or Consumers Rock & Gravel Company, Inc., and to the further portion of the Findings under said caption, commencing at the end of line 28, page 27 of the Master's Report, and reading as follows:

"It is found that the Consolidated stockholders have substantial equities in the properties included in the Plan of Reorganization, and that the interests and rights granted said stockholders under the Plan of Reorganization are not out of proportion to the equities for said stockholders, considering their contribution to the existing properties now represented by the Consolidated companies and that the plan of reorganization is fair, just and equitable with respect to the rights of said stockholders."

said exception being based

"upon the fact that said specific Findings are contrary to the evidence adduced before the Special Master showing: That Consolidated Rock Products Co., as the sole stockholder of Union Rock Company and Consumers Rock & Gravel Company, Inc., has no substantial or other equity in either company, is indebted to said subsidiaries under the operating agreement attached to the Special Master's report in an amount in excess of \$6,000,000.00, which it is unable to pay, and has no property of substantial value to contribute to the Plan of Reorganization so as to justify its retention of equity ownership while bonded indebtedness is being halved, accrued interest waived and future interest reduced."

Denial of the above exception was contrary to law and the evidence

XIII.

The Court erred in denying appellant's Exception No. III to the Findings and Report of the Special Master, reading as follows:

"To all that portion of the Findings captioned 'Findings with Respect to the Objections of Objector E. Blois duBois,' Master's Report, page 28, commencing at line 18, page 29, and reading as follows:

'The main and principal objection of Mr. duBois to the plan of reorganization may be summarized as follows: That the stockholders of Consolidated have no equity in or to the properties represented by the plan of reorganization, and that said stockholders should not be given any right or interest under said plan, and that the entire properties of the Union Company, Reliance Company, Consumers Company and of Consolidated, including all of the equipment, trucks, automobiles and appliances, be available for sole benefit of the bondholders of the Union Company and Consumers Company. The evidence shows that the objection of Mr. duBois is without merit or support. The other objections of Mr. duBois, as presented in his written objections and at the hearing, have been covered by other portions of these Findings and are likewise without merit or support,'

and to the failure of the Master to find specifically upon the several objections to the Plan of Reorganization presented in the written objections of said E. Blois duBois on file herein,"

said exception being based

"upon the fact that said specific findings are contrary to the evidence adduced before the Special Master showing: That the objections of Objector E. Blois duBois to the

unfairness of the plan are meritorious and that the plan contemplates a reduction of the lien interest of the bondholders for the benefit of the stockholders of Consolidated Rock Products Company, who at the present have no substantial equity and are called upon to make no sacrifice whatever under the Plan of Reorganization.

Denial of the above exception was contrary to law and the evidence.

XIV.

The Court erred in denying appellant's Exception No. IV to the Findings and Report of the Special Master, reading as follows:

"To that portion of the Findings captioned 'Independent Appraisal,' Master's Report, page 30, and each part thereof, reading as follows:

"The plan of reorganization, as heretofore found, is the result of nearly two years of conscientious effort of opposing and conflicting interests. The evidence developed that there has been such a commingling of the assets and properties, including the funds from the sale of stock of Consolidated, that an appraisal of the properties would be of no value to the court and would be of such indefinite and unsatisfactory nature as to produce further confusion, and a separate, independent appraisal would result in unnecessary and great delay and expense to all parties. Its benefits would be highly problematical. There is no evidence that the plan of reorganization has dealt unfairly or inequitably with the bondholders of the Union and Consumers companies or the stockholders of Consolidated. All interests are unanimous in their conviction that none of the interests are receiving as much as they are entitled to. The evidence shows, however, that the division of the respective interests in the plan, of

reorganization not only presents a feasible and workable plan, but likewise has taken into consideration all of the claims equities and rights of the bondholders and stockholders and has arrived at a plan which gives full recognition to the rights and equities of each class,

and to the failure of the Master to order disinterested appraisal of the assets of the respective corporations proposed to be transferred to the new corporation in effecting reorganization of the debtor companies, or otherwise to evaluate the interests of the respective parties to the Plan of Reorganization,"

said exception being based

"upon the fact that said specific findings are contrary to the evidence adduced before the Special Master showing: That Consolidated Rock Products Company, as the sole stockholder of Union Rock Company and Consumers Rock & Gravel Company, Inc., has no substantial or other equity in either company, is indebted to said subsidiaries under the operating agreement attached to the Special Master's report in an amount in excess of \$6,000,000.00, which it is unable to pay, and has no property of substantial value to contribute to the Plan of Reorganization so as to justify its retention of equity ownership while bonded indebtedness is being halved; accrued interest waived and future interest reduced,"

and

"that reference to the Special Master was made in part for the purpose of passing upon the matters as to which no findings have been made, and that findings upon said

matters are essential to proper determination of the issues before the Court, including the fairness of the Plan of Reorganization and respective rights of the various parties interested therein."

Denial of the above exception was contrary to law and the evidence.

XV.

The Court erred in denying appellant's Exception No. V to the Findings and Report of the Special Master, reading as follows:

"To the failure of the Special Master to find upon the question of the solvency of Union Rock Company and/or Consumers Rock & Gravel Company, Inc.,"

said exception being based

"upon the fact that reference to the Special Master was made in part for the purpose of passing upon the matters as to which no findings have been made and that findings upon said matters are essential to proper determination of the issues before the Court, including the fairness of the Plan of Reorganization and the respective rights of the various parties interested therein."

Denial of the above exception was contrary to law and the evidence.

XVI.

The Court erred in denying appellant's Exception No. VI to the Findings and Report of the Special Master, reading as follows:

"To the failure of the Special Master to find upon the validity of the agreement purported to have been entered

into by Consolidated Rock Products Company, Union Rock Company, Consumers Rock & Gravel Company, Inc. and Reliance Rock Company under date of February 16, 1933, purporting to modify the original operating agreement entered into by said companies under date of July 15, 1929, copies of which agreements are attached to the Special Master's Report as exhibits,"

said exception being based

"upon the fact that reference to the Special Master was made in part for the purpose of passing upon the matters as to which no findings have been made and that findings upon said matters are essential to proper determination of the issues before the Court, including the fairness of the Plan of Reorganization and the respective rights of the various parties interested therein."

Denial of the above exception was contrary to law and the evidence.

XVII.

The Court erred in denying appellant's Exception No. VII to the Findings and Report of the Special Master, reading as follows:

"To the failure of the Special Master to make any finding with respect to the indebtedness owing by Consolidated Rock Products Company, Union Rock Company, Consumers Rock & Gravel Company, Inc. and/or Reliance Rock Company, one to the other, under the written agreements referred to in Exception VI above,"

said exception being based

"upon the fact that reference to the Special Master was made in part for the purpose of passing upon the matters as to which no findings have been made and that findings upon said matters are essential to proper determination of the issues before the Court, including the fairness of the Plan of Reorganization and the respective rights of the various parties interested therein."

Denial of the above exception was contrary to law and the evidence.

XVIII.

The Court erred in denying appellant's Exception No. VIII to the Findings and Report of the Special Master, reading as follows:

"With reference to the Findings of the Special Master as to the value of the properties involved, Master's Report, pages 22 to 25, both inclusive, exception is taken to the value of \$1,000,000.00 placed upon the assets of Consolidated Rock Products Company and the value of \$500,000.00 placed upon its good will and going business value, on the ground that said Findings, and each of them, are not supported by the evidence and that the Finding as to good will and going business value is not supported by competent testimony, but merely by the guess and speculation of one witness."

Denial of the above exception was contrary to law and the evidence.

XIX.

The Court erred and abused its discretion in entering its order of August 1, 1938 denying the motion of petitioner and appellant for re-opening of hearing on the proposed Plan of Reorganization herein, and objections thereto, to consider the marked improvement in the financial and business conditions of the debtor companies as shown by earnings statements for the period subsequent to completion of hearing before the Special Master on November 17, 1937.

WHEREFORE, petitioner and appellant prays that the Order and Decree confirming the Plan of Reorganization herein be reversed.

Dated: Los Angeles, California, October 7, 1938.

JOHN G. MOTT
(John G. Mott)

PAUL VALLEE
(Paul Vallee)

KENNETH E. GRANT
(Kenneth E. Grant).

Attorneys for Appellant.

(Endorsed) Assignment of Errors. Filed Oct. 8, 1938.
Paul P. O'Brien, Clerk.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 12 min. past 2 o'clock Oct. 24, 1938 P. M. By M. J. Sommer, Deputy Clerk.

At a Stated Term, to wit: The October Term A. D. 1938, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the tenth day of October in the year of our Lord one thousand nine hundred and thirty-eight.

PRESENT:

Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding,

Honorable FRANCIS A. GARRECHT, Circuit Judge,

Honorable WILLIAM DENMAN, Circuit Judge.

E. BLOIS DuBOIS,

Appellant,

vs.

No. 9000

CONSOLIDATED ROCK PRODUCTS

CO., a Corporation, et al.,

Appellees.

ORDER ALLOWING APPEAL.

Upon consideration of the petition of E Bloise duBois, for allowance of appeal under section 24b of the Bankruptcy Act, filed October 8, 1938, and of the assignments of error thereon, filed therewith, and by direction of the Court,

IT IS ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the

order of the District Court of the United States for the Southern District of California, Central Division, entered herein on the 8th day of September, 1938, be, and the same hereby is allowed, conditioned upon the giving of a cost bond in the sum of Two Hundred and Fifty Dollars (\$250.00) with good and sufficient security, within ten days from date.

IT IS FURTHER ORDERED that if an appeal has been heretofore allowed in this cause by said District Court, and a cost bond given on such appeal, then no additional cost bond need be given on this appeal.

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

ATTEST my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 10th day of October, A. D. 1938.

Paul P O'Brien

Clerk, U. S. Circuit Court of Appeals for the
Ninth Circuit

[Endorsed]: Filed R. S. Zimmerman, Clerk at 12 min. past 2 o'clock Oct. 24, 1938 P. M. M. J. Sommer, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

In the Matter of	)	In Proceedings
CONSOLIDATED ROCK PROD-	)	for the
UCTS CO., a Delaware corporation,	)	Reorganization
	)	of a
Debtor,	)	Corporation.
	)	No. 25816-H
UNION ROCK COMPANY, a cor-	)	PETITION
poration,	)	FOR LEAVE
	)	TO APPEAL
Subsidiary,	)	TO THE
	)	UNITED
and	)	STATES CIR-
	)	CUIT COURT
CONSUMERS ROCK & GRAVEL	)	OF APPEALS
COMPANY, INC., a corporation,	)	FOR THE
	)	NINTH
Subsidiary.	)	CIRCUIT.

To the Honorable Judges of the District Court of the
United States, Southern District of California, Central
Division:

E. Blois duBois, an objector of record to confirmation
of the Plan of Reorganization of the above named debtor
corporations submitted by Consolidated Rock Products
Co., a corporation, Union Rock Company Bondholders'
Protective Committee and Consumers Rock & Gravel
Company Bondholders' Protective Committee, dated March

March 15, 1937, and the owner and holder of bonds of Union Rock Company in the principal amount of \$150,000.00 and of Consumers Rock & Gravel Company, Inc. in the principal amount of \$31,500.00, feeling himself aggrieved by the order and decree of the District Court of the United States for the Southern District of California, Central Division, entered herein on the 8th day of September, 1938, by the Honorable Harry A. Hollzer, one of the judges of said court, denying the exceptions of said E. Blois duBois to the report of the Special Master herein, approving said report and confirming the aforesaid Plan of Reorganization of the above named debtor corporations, hereby petitions for leave to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from such order and decree, and the whole thereof, for the reasons set forth in petitioner's assignment of errors filed herewith.

Petitioner prays that appeal to said United States Circuit Court of Appeals for the Ninth Circuit may be allowed him, that the amount of cost bond on appeal be fixed, that a citation be issued directed to Consolidated Rock Products Co., a corporation; F. B. Badgley, Colonel R. E. Frith, T. Fenton Knight and Walter S. Taylor, composing the Union Rock Company Bondholders' Protective Committee; Wm. D. Courtright, Fred L. Dreher, F. J. Gay and Guy Witter, composing the Consumers

Rock and Gravel Company, Inc. Bondholders' Protective Committee; and Edward E. Hatch and Louis Van Gelder, composing the Preferred Stockholders Committee of Consolidated Rock Products Co., commanding them, and each of them, to appear before the said United States Circuit Court of Appeals for the Ninth Circuit to do and receive that which may appertain to justice in the premises, and that a transcript of the records, papers, proceedings, offers, stipulations and evidence upon which said order and decree was entered, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated October 3, 1938.

John G. Mott
(John G. Mott)

Paul Vallee
(Paul Vallee)

Kenneth E. Grant
(Kenneth E. Grant)

Attorneys for Petitioner.

E. Blois duBois
Petitioner.

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

STATE OF CALIFORNIA)

) ss

County of Los Angeles)

E. BLOIS duBOIS, being first duly sworn, upon oath
deposes and says:

That he is the petitioner for leave to appeal named in
the foregoing petition; that he has read said petition and
knows the contents thereof and that the same is true of
his own knowledge.

E. Blois duBois

Subscribed and sworn to before me this 3rd day of
October, 1938.

[Seal]

Katherine Spengler

Notary Public in and for the County of Los Angeles,
State of California

[Endorsed]: Filed R. S. Zimmerman, Clerk at 27
min. past 1 o'clock Oct - 4, 1938 P. M. By L. B. Figg,
Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

NOTICE OF APPEAL

Pursuant to the order of the above entitled Court heretofore entered allowing appeal, notice is hereby given that E. Blois duBois, an objecting bondholder of record to the plan of reorganization herein, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that certain order entered herein September 8, 1938, and the whole thereof, denying the exceptions of appellant to the report of the Special Master, approving said Special Master's report, and confirming the plan of reorganization proposed herein by the above debtor, Union Rock Company Bondholders' Protective Committee and Consumers Rock & Gravel Company, Inc., Bondholders' Protective Committee.

Dated: Los Angeles, California, October 8, 1938.

JOHN G. MOTT
PAUL VALLEE
KENNETH E. GRANT

BY Kenneth E. Grant

Attorneys for E. Bois duBlois

[Endorsed]: Filed R. S. Zimmerman, Clerk at 14 min.
past 11 o'clock Oct - 8, 1938 A. M. By M. J. Sommer,
Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

STIPULATION

It is hereby stipulated that the same Assignment of Errors was filed by appellant, E. Blois duBois, in the above entitled court and in the Circuit Court of Appeals for the Ninth Circuit, and that such Assignment of Errors shall be printed but once in the record on appeal herein.

Dated: December 23, 1938.

JOHN G. MOTT

PAUL VALLEE

KENNETH E. GRANT

By K. E. Grant

Attorneys for Appellant

O'MELVENY, TULLER & MYERS

HOMER I. MITCHELL

And Graham L. Sterling, Jr.

Attorneys for Appellees F. B. Badgley, Colonel R. E. Frith, T. Fenton Knight and Walter S. Taylor, composing the Union Rock Company Bondholders' Protective Committee.

GIBSON, DUNN & CRUTCHER

By T. H. Joyce

Attorneys for Appellees Wm. D. Courtright, Fred
L. Dreher, F. J. Gay and Guy Witter, com-
posing the Consumers Rock & Gravel Company,
Inc., Bondholders' Protective Committee.

Stanley Arndt

(Stanley Arndt)

Attorney for Appellees Edward E. Hatch and Louis
Van Gelder, composing the Preferred Stock-
holders' Committee of Consolidated Rock Prod-
ucts Co.

LATHAM, WATKINS & BOUCHARD

And Paul E. Watkins

Attorneys for Appellees Consolidated Rock Products
Co., Union Rock Company and Consumers Rock
& Gravel Company, Inc.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 28 min.
past 4 o'clock, Dec. 30, 1938 P. M. By M. J. Sommer.
Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

ORDER ALLOWING APPEAL.

The Court having considered the Petition of E. Blois duBois, an objecting bondholder of record, for leave to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain Order entered in the above entitled proceedings September 8, 1938 confirming the Plan of Reorganization dated March 15, 1937 submitted by Consolidated Rock Products Co., a corporation, Union Rock Company Bondholders' Protective Committee and Consumers Rock & Gravel Company Bondholders' Protective Committee, and having considered the Assignment of Errors filed by said E. Blois duBois with said Petition for Leave to Appeal,

NOW, THEREFORE, IT IS HEREBY ORDERED:

That said E. Blois duBois, as an objecting bondholder of record to the said proposed Plan of Reorganization herein, be and hereby is granted leave to appeal to the United States Circuit Court of Appeals for the Ninth Circuit as prayed for in his said Petition from the Order and Decree, and the whole thereof, entered herein September 8, 1938, confirming the said Plan of Reorganization.

IT IS FURTHER ORDERED:

That said petitioner's Cost Bond on Appeal be and hereby is fixed in the sum of \$250.00; and that a transcript of the record and of all papers, proceedings, arguments, offers, stipulations and evidence upon which the aforesaid Decree is based, be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: October 4, 1938.

H. A. Hollzer

Judge of the United States District Court.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 2 min.
past 2 o'clock Oct - 4, 1938 P. M. By M. J. Sommer,
Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

COST BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, E. Blois duBois, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Consolidated Rock Products Co., a corporation; F. B. Badgley, Colonel R. E. Frith, T. Fenton Knight and Walter S. Taylor, composing the Union Rock Company Bondholders' Protective Committee; Wm. D. Courtright, Fred L. Dreher, F. J. Gay and Guy Witter, composing the Consumers Rock and Gravel Company, Inc. Bondholders' Protective Committee; and Edward E. Hatch and Louis Van Gelder, composing the Preferred Stockholders Committee of Consolidated Rock Products Co. in the full and just sum of \$250.00 to be paid to the said Consolidated Rock Products Co., a corporation, F. B. Badgley, Colonel R. E. Frith, T. Fenton Knight and Walter S. Taylor, composing the Union Rock Company Bondholders' Protective Committee; Wm. D. Courtright, Fred L. Dreher, F. J. Gay and Guy Witter, composing the Consumers Rock and Gravel Company, Inc. Bondholders' Protective Committee; and Edward E. Hatch and Louis Van Gelder, composing the Preferred Stockholders Committee of Consolidated Rock Products Co., their successors and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 4th day of October in the year of our Lord one thousand nine hundred and thirty-eight.

WHEREAS lately, on September 8, 1938, at the District Court of the United States for the Southern Dis-

trict of California, Central Division, in proceedings depending in said Court for the reorganization of Consolidated Rock Products Co., a corporation, and its subsidiaries, Union Rock Company, a corporation, and Consumers Rock & Gravel Company, Inc., a corporation, an order and decree was rendered against the said E. Blois duBois, denying his exceptions to the Report of the Special Master therein, approving said Report and confirming the Plan of Reorganization submitted in said proceedings by Consolidated Rock Products Co., a corporation, Union Rock Company Bondholders' Protective Committee, and Consumers Rock & Gravel Company, Inc. Bondholders' Protective Committee, dated March 15, 1937, and the said E. Blois duBois having obtained from said District Court of the United States for the Southern District of California, Central Division, leave to appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the said order and decree in the aforesaid proceedings, and a citation directed to said Consolidated Rock Products Co., a corporation; F. B. Badgley, Colonel R. E. Frith, T. Fenton Knight and Walter S. Taylor, composing the Union Rock Company Bondholders' Protective Committee; Wm. D. Courtright, Fred L. Dreher, F. J. Gay and Guy Witter, composing the Consumers Rock and Gravel Company, Inc. Bondholders' Protective Committee; and Edward E. Hatch and Louis Van Gelder, composing the Preferred Stockholders Committee of Consolidated Rock Products Co., citing and admonishing them, and each of them, to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California,

Now the condition of the above obligation is such that if the said E. Blois duBois shall prosecute said appeal to

effect, and answer all costs if he fails to make his plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

Acknowledged before me the day and year first above written.

E. Blois duBois

(Principal)

Address P. O. Box 711

Fallbrook, California

FIDELITY AND DEPOSIT
COMPANY OF MARYLAND

[Seal]

By D. M. Ladd

Attorney-in-Fact

By S. M. Smith

Agent

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

STATE OF CALIFORNIA)

) SS

County of Los Angeles)

On this 4th day of October, 1938, before me, Katherine Spengler, a Notary Public in and for said County and State, personally appeared E. Blois duBois, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

Katherine Spengler

Notary Public in and for the County of Los Angeles,
State of California

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

STATE OF CALIFORNIA)

County of Los Angeles)

SS

On this 4th day of October, 1938, before me, Theresa Fitzgibbons, a Notary Public in and for the County and State aforesaid, duly commissioned and sworn, personally appeared D. M. Ladd and S. M. Smith, known to me to be the persons whose names are subscribed to the foregoing instrument as the Attorney-in-fact and agent respectively of Fidelity and Deposit Company of Maryland, and acknowledged to me that they subscribed the name of Fidelity and Deposit Company of Maryland thereto as principal and their own names as Attorney-in-fact and agent respectively.

[Seal]

Theresa Fitzgibbons

Notary Public in and for the County of Los Angeles,
State of California.

My commission expires May 3, 1942

Examined and recommended for approval as provided in Rule 13.

K. E. Grant

The foregoing and above bond is hereby approved.
October 4, 1938.

H. A. Hollzer

Judge of the District Court of the United States.

[Endorsed]: Filed R. S. Zimmerman, Clerk at 10 min. past 3 o'clock Oct. 4, 1938 P. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PRAECIPE

TO THE CLERK OF SAID COURT:

Sir:

Please print 70 copies of Record on Appeal in the above
matter

Mott, Vallee & Grant

Kenneth E. Grant

Attorneys for Appellant

[Endorsed]: Filed Dec. 23, 1938 at 3:30 p. m. R. S.
Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk

[Title of District Court and Cause.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 358 pages, numbered from 1 to 358 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation issued in the United States District Court; citation issued in the United States Circuit Court; petition of Debtor and Bondholders' Committees submitting plan of reorganization dated March 15, 1937; objections to plan of reorganization; petition for hearing for proposal, consideration and confirmation of the plan of reorganization; supplemental objections of E. Blois duBois to plan of reorganization; findings and report of Special Master; exceptions of objector E. Blois duBois to findings and report of Special Master, etc.; supplemental exception of objector E. Blois duBois to findings and report of Special Master, etc.; motion to reopen hearing with respect to confirmation of proposed plan of reorganization; affidavit in support of motion to reopen hearing on plan of reorganization proposed, etc.; motion to dismiss, etc.; order of August 5, 1938; memorandum of conclusions; findings and order confirming plan of reorganization of Consolidated Rock Products Co.,

Union Rock Company and Consumers Rock Gravel Company, Inc.; agreed statement of the case; petition for leave to appeal in the United States Circuit Court; assignment of errors in the United States Circuit Court; order allowing appeal in the United States Circuit Court; petition for leave to appeal in the United States District Court; notice of appeal in the United States District Court; stipulation re: assignment of errors in the United States District Court; order allowing appeal in the United States District Court; cost bond on appeal and praecipe.

I Do Further Certify that the amount paid for printing the foregoing record on appeal is \$535.90 and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to \$50.10 and that said amount has been paid me by the appellant herein.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this 14th day of February, in the year of Our Lord One Thousand Nine Hundred and Thirty-nine and of our Independence the One Hundred and Sixty-third.

[Seal]

R. S. ZIMMERMAN,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By EDMUND L. SMITH,

Deputy.

No. 9000

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

E. BLOIS DU BOIS, an objecting bondholder of record to
the Plan of Reorganization,

Appellant,

vs.

CONSOLIDATED ROCK PRODUCTS CO., a corporation;
F. B. BADGLEY, COLONEL R. E. FRITH, T. FENTON
KNIGHT, and WALTER S. TAYLOR, composing the
Union Rock Company Bondholders' Protective Commit-
tee; WM. D. COURTRIGHT, FRED L. DREHER, F. J.
GAY and GUY WITTER, composing the Consumers
Rock and Gravel Company, Inc. Bondholders' Protective
Committee; and EDWARD E. HATCH and LOUIS VAN
GELDER, composing the Preferred Stockholders Com-
mittee of Consolidated Rock Products Co.,

Appellees.

Upon Appeal from the District Court of the United
States for the Southern District of California,
Central Division

**PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.**

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United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, June 5,
1939.

Before: Garrecht, Haney and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal in above cause argued by Mr.
Kenneth E. Grant, counsel for appellant, and by
Messrs. Graham L. Sterling, Jr., and J. C. Macfar-
land, counsel for appellees, and submitted to the
court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, February
19, 1940.

Before: Garrecht, Haney and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER GRANTING PETITION FOR
REHEARING, ETC.

Upon consideration of the petition of appellant,
filed December 1, 1939, and within time allowed
therefor by rule of court, for a rehearing of above
cause, and of the answer of Union Rock Company

and Preferred Stockholders' Committee thereto, filed December 12, 1939, and by direction of the Court,

It Is Ordered that said petition for a rehearing be, and hereby is granted; that the opinions of this court heretofore rendered and filed on November 4, 1939 be, and they hereby are withdrawn; that the decree of this court heretofore filed and entered on November 4, 1939 be, and hereby is vacated and set aside.

It Is Further Ordered that each party herein file within fifteen days from date, a typewritten brief, furnishing four clear legible copies, upon letter size paper, 8 x 10½, bound on the left margin as a book, upon the question as to how the decision of the Supreme Court of the United States in Case, et al., vs. Los Angeles Lumber Products Co., Ltd., 308 U. S. 106, 60 S. Ct. 1, 84 L. Ed. 22, affects the decision appealed from in the above entitled cause. No reply briefs to be filed.

It Is Further Ordered that upon the filing of the respective briefs above called for this cause is to stand resubmitted without further oral argument.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday, June
19, 1940.

Before: Garrecht, Haney and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF
DECREE.

By direction of the Court, Ordered that the type-written opinion* this day rendered by this court in above cause be forthwith filed by the clerk and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

OPINION

Upon Petition For Rehearing

Before: Garrecht, Haney and Stephens,
Circuit Judges.

Haney, Circuit Judge.

An objecting bondholder has appealed from an order confirming a plan of reorganization under §77B of the Bankruptcy Act.

*Opinion modified by Order of Monday, August 5, 1940.

In the year 1929, Union Rock Company, hereinafter called Union, Consumers Rock & Gravel Company, Inc., hereinafter called Consumers, and Reliance Rock Company, hereinafter called Reliance, all of which were Delaware corporations, were engaged in the business of mining, processing, shipping, and selling rock, sand and gravel. Prior to, or about the time of what the parties call the "consolidation" hereinafter mentioned, Union acquired all the outstanding stock of Reliance. These three corporations carried on about 75% of all the rock, sand and gravel business carried on in Southern California.

Both Union and Consumers had 6% first mortgage bonds outstanding. The acreage of the properties owned by each are shown as follows:

	<u>Fee</u>	<u>Lease</u>	<u>Total</u>
Union and subsidiaries	2121.10	470.75	2491.55
Consumers	321.32	919.84	1241.16

In 1928, independent appraisers appraised the properties of Union and Consumers at approximately \$15,000,000. The record does not disclose how these values were allocated between Union and Consumers. Balance statements made on March 31, 1929, show values of fixed assets, as follows:

Union	\$ 6,644,868.99
Reliance	1,533,389.60
Consumers	4,988,134.66
	<hr/>
	\$13,166,393.16

At the same time the amount of bonds outstanding in the hands of the public was as follows:

Union	\$2,388,000.00
Consumers	1,492,000.00

The consolidation referred to was accomplished by organization of a Delaware corporation, Consolidated Rock Products Co., hereinafter called the debtor, with no par preferred stock, having a liquidation preference of \$25 per share and a dividend rate of \$1.75 per share, and no par common stock, which stock was either exchanged for the stock in Union and Consumers, or sold and part of the proceeds thereof used to acquire stock in Union and Consumers. Some of the proceeds of the sale were used to purchase operating equipment. Debtor then made an agreement by which it became entitled to operate directly the properties of Union and Consumers, and was required to meet payments of principal and interest on the bonds.

In 1931 a revaluation of the properties was made by officers of the debtor, who fixed the value of all properties at \$4,414,425.00. The record does not disclose how those values were allocated between the corporations.

On February 16, 1933 an agreement was executed purporting to be a modification of the operating agreement. The operating agreement required the debtor to make allowance for depreciation, depletion and obsolescence but did not prescribe the value basis to be used. The accountants had used the then

book value as a basis: The modification provided for an "actual value" basis, to be obtained yearly by a Board of Appraisers. Default in the payment of the interest due on the Union bonds occurred on March 1, 1934. A similar default occurred with respect to the Consumers bonds on July 1, 1934. There were defaults also in required retirements.

Appellant acquired Union bonds having a maturity value of \$150,000 after default thereon had occurred. Of that amount he acquired \$72,000 of bonds prior to the date upon which debtor's petition under §77B was filed, and \$78,000 of such bonds after such date. He also acquired \$31,500 of Consumers bonds after default thereon but before the filing of proceedings under §77B. He testified that he purchased the bonds after careful inquiry and with the full belief and conviction that a building "boom" would soon occur, and that he did not purchase them for purposes of speculating or market fluctuations. The \$181,500 of bonds were purchased by appellant for \$28,300.

On May 24, 1935, the debtor, Union and Consumers filed petition to reorganize under §77B of the Bankruptcy Act. On April 28, 1937 the petition submitting the plan of reorganization was filed. Appellant filed objections, and asked that the various properties be impartially appraised, and that an independent auditor be appointed to report the indebtedness. On September 30, 1937 the amount of principal and interest due on bonds held by the public was:

	<u>Principal</u>	<u>Interest</u>
Union	\$1,877,000	\$459,865
Consumers	1,137,000	255,825
	<hr/> \$3,014,000	<hr/> \$715,690

About this time the debtor's books showed that it owed Union and Consumers about \$5,000,000, the validity and amount of such debt being disputed by the debtor.

The plan of reorganization contemplated: Organization of a new corporation; transfer to it of all Union properties (including those of its subsidiaries), Consumers' and debtor's properties free of any claims; issuance by the new corporation of a mortgage covering all the properties as security for \$5,507,000 in 5% bonds payable from income only, and divided into two series; Series U bonds in the amount of \$938,500 were to go to Union bondholders; Series C bonds in the amount of \$568,500 were to go to Consumers bondholders; issuance by the new corporation of 30,140 5% preferred stock having a par value of \$50,000, in two series; 18,770 shares of Series U preferred stock was to be issued to Union bondholders, and 11,370 shares of Series C preferred stock was to be issued to Consumers bondholders; issuance by the new corporation of 425,718 shares of common stock having a par value of \$2 per share, as follows: 285,947 shares to debtor's preferred stockholders; 37,540 shares to be reserved for issuance upon the exercise of stock purchase war-

rants to be attached to Series U preferred stock; 22,740 shares to be reserved for issuance upon exercise of stock purchase warrants to be attached to Series C preferred stock; 79,491 shares to be reserved for issuance upon the exercise of stock purchase warrants to be issued to the debtor's common stockholders. The net income was to be divided into equal parts; one part was to be applied: to interest on Series U bonds, then to sinking fund for retirement of Series U bonds, then to dividends on preferred stock, then to a sinking fund for retirement of Series U preferred stock after Series U bonds were retired. The other part of the net income was to be applied in the same manner and order on the Series C bonds and preferred stock. The plan also apparently provides for cancellation of the interest due on Union and Consumers bonds, and of any indebtedness owing Union and Consumers by the debtor, although it is not clear where the record so shows.

Under a plan, the holder of a \$1000 Union bond was to receive: (1) a Series U bond of the new corporation in the amount of \$500; (2) 10 shares (having a total par value of \$500) of Series U preferred stock of the new corporation; and (3) a stock purchase warrant entitling the holder to purchase 20 shares of common stock of the new corporation at any time within five years at stipulated prices varying from \$2 to \$6 per share, depending on the time of exercise. The holder of a \$1000 Consumers bond

obtained the same treatment except that he received Series C bonds and preferred stock.

At the hearing valuations of the properties were given by Mitchell, who was vice president and secretary of the debtor, secretary of Union and secretary of Consumers, by Rogers who had been employed by Union for many years prior to the consolidation, and by Gautier, an executive officer of the debtor. The valuations of the properties of Union (including Reliance), and Consumers so given were:

Witness	Union	Consumers
Mitchell	\$2,150,200	\$1,267,100
Rogers	2,518,000	750,000
Gautier	1,940,000	1,436,000
Average	2,202,733	1,151,033

Taking the average of these valuations, the following shows a comparison with the amount of principal and interest due on the bonds:

Union		Consumers	
Valuation	Bond Pr. & Int.	Valuation	Bond Pr. & Int.
\$2,202,733	\$2,336,865	\$1,151,033	\$1,392,825

The parties seem to assume that the properties are valuable enough to pay the bonds in full, and it may be they are considering only the principal. From the above valuation, it can be seen that both principal and interest now due would be amply secured only if the debtor is indebted to Union and Consumers.

The special master to whom the cause had been referred found that the assets of Union, Consumers,

Reliance and the debtor "are entirely insufficient and inadequate to pay the face value of the bonds, plus all accrued interest and the liquidation preferences, plus accrued dividends upon the preferred stock of" the debtor; that the value of the assets, admittedly subject to the trust indentures "is insufficient to pay the par value of the bonds, plus accrued interest"; that "the fair present going-concern value of all of the properties, if operated as a unit, is in excess of the total bonded indebtedness plus accrued and unpaid interest thereon up to April 1, 1937, the latter being the date of the new bonds to be issued under the plan of reorganization". He further found that it was to the bondholder's interest to operate the properties as a unit because by such operation they would receive a larger yield and return both as to principal and interest on the bonds, and recommended approval of the plan of reorganization.

The trial court found that the properties of Union, Consumers and Reliance had been commingled and that it was impossible to segregate "with any degree of accuracy of fairness properties which originally belonged to the companies separately"; and confirmed the findings of the special master with respect to values stated above. The court approved the plan as fair and equitable and from the order to that effect, appellant appeals.

On November 4, 1939, a majority of this court, one judge dissenting, affirmed the order. 107 F(2d) 96, Advance Sheet, not contained in permanent

volume.. Two days thereafter and on November 6, 1939, Case v. Los Angeles Lumber Co., 308 U. S. 106, was decided. On February 19, 1940, we granted appellant's petition for a rehearing, vacated the decree entered pursuant to our opinion, withdrew the opinion, and directed the parties to file briefs regarding the applicability and effect of Case v. Los Angeles Lumber Co., supra, on the instant case. The Securities and Exchange Commission sought and was granted leave to file a brief as amicus curiae. In addition, one Edgar Shook sought and was granted leave to file a brief as amicus curiae. Shook is interested in a similar reorganization plan for an unrelated corporation, the proceedings being in the jurisdiction of a Kansas court.

The debtor, preferred stockholders' committee, the bondholders' protective committee, and amicus curiae Shook, have filed briefs in support of the plan of reorganization, and all will hereafter be referred to as appellees without identification. Appellant and amicus curiae, Securities and Exchange Commission have filed briefs opposing the plan and will hereafter be referred to as appellants without identification.

Before discussing the various contentions in detail, it should be remembered that Union bondholders had a first and prior claim on Union's assets, which included stock of Reliance, as well as a portion of the claim for \$5,000,000, against the debtor, if valid. Likewise Consumers bondholders had a first and prior claim against Consumers' assets, which

included a portion of the claim for \$5,000,000 against the debtor, if valid. If the claim mentioned was valid then both groups of bondholders through Union and Consumers would have in addition a claim against any assets owned by the debtor prior to any claim of debtor's preferred stockholders, to the extent of the liability. It can be seen, therefore, that until the claim is settled, either voluntarily or by litigation, there is no way to determine the fairness of any plan of reorganization, because until it is known what assets are subject to payment of the bonds, we have no way of knowing what the bondholders will lose, if anything.

Likewise, the lack of findings as to the precise value of assets covered by the trust indentures, the value of assets not covered by such indentures but subject to the bonded indebtedness, and the value of assets free of any claims of the bondholders, seriously hampers any judgment on the matter. In this respect, the findings are inconsistent. It has been found that the assets have been so commingled that identification thereof is impossible, yet findings are made to the effect that assets subject to the trust indentures are insufficient to pay the principal of and interest on the bonds. However, since the plan proposed, we think, is unfair as a matter of law for reasons hereafter stated, we assume that both matters mentioned will be satisfactorily disposed of upon remand of the cause.

In Case v. Los Angeles Lumber Co., *supra*, the debtor owed bondholders and had two classes of

stock outstanding, both having equal voting power. Class A stock had been issued in return for a contribution of \$400,000, and Class B stock had been issued in payment of unpaid interest on bonds. Bonds outstanding amounted to \$3,807,071.88 including interest. There were outstanding 57,788 shares of Class A stock and 5,112 shares of Class B stock. The debtor was insolvent "both in the equity and in the bankruptcy sense". (p. 109). The plan of reorganization contemplated the formation of a new corporation with preferred and common stock having a par value of \$1 per share. The bondholders were to receive 641,375 shares of a total of 811,375 shares of preferred stock, for their claims as bondholders. The remaining preferred stock was to be sold for cash. Class A stockholders were to receive all the new common stock consisting of 188,625 shares. No provision was made for Class B stock. Holders of 92.81% of the face amount of the bonds, 99.75% of the Class A stock, and 90% of the Class B stock approved the plan.

The plan was held unfair as a matter of law because, while the bondholders were entitled to all the assets, the plan required them "to surrender to the stockholders 23 per cent of the value of the enterprise". (p. 119). The court said, however, that a stockholder could participate in a plan of reorganization of an insolvent debtor, but that in such case, in order to accord the creditor his full right of priority against the corporate assets "the stockholder's participation must be based on a contribu-

tion in money or in money's worth, reasonably equivalent in view of all the circumstances to the participation of the stockholder". Here we are interested in the first point mentioned.

Section 77B(f) requires a plan of reorganization to be "fair and equitable" among other things. The court held that the words "fair and equitable" were used in §77B in the same sense and had the same meaning as they had "in the field of equity receivership reorganizations"; that in such reorganizations, the words "fair and equitable" included "the rules of law enunciated by this Court in the familiar cases of *Railroad Co. v. Howard*, 7 Wall. 392; *Louisville Trust Co. v. Louisville, N. A. & C. Ry. Co.*, 174 U. S. 674; *Northern Pacific Ry. Co. v. Boyd*, 228 U. S. 482; *Kansas City Terminal Ry. Co. v. Boyd*, 228 U. S. 482; *Kansas City Terminal Ry. Co. v. Central Union Trust Co.*, 271 U. S. 445."

It is unnecessary to discuss fully the cases cited, because they are fully discussed in *Case v. Los Angeles Lumber Co.*, *supra*. It is enough to say that the latter case, with respect to full priority holds that: a stockholder's interest, in corporate property is subordinate, first, to the rights of secured creditors, and second, to the rights of unsecured creditors (p. 116); that creditors are entitled to be paid from the property before the stockholders can retain it for any purpose whatever (p. 116); that such right of the creditors to priority over stockholders extends to "all the property" of the debtor, and to "the full value" thereof (p. 120); and that any

plan "by which the subordinate rights and interests of stockholders are attempted to be secured at the expense of the prior rights of either class of creditors comes within judicial denunciation". (p. 116).

It is obvious that the plan here is condemned by these rules. The trial court found that the property of Union covered by the trust indenture was insufficient to pay the principal and accrued interest of the bonds issued by Union, yet the Union bondholders are deprived of their right to full priority against Union's assets, since Consumers' bondholders and debtor's preferred stockholders are given an interest in Union's property. Likewise, the trial court found that the property of Consumers covered by the trust indenture was insufficient to pay the principal and accrued interest of the bonds issued by Consumers, yet Consumers' bondholders are deprived of their right to full priority against Consumers' assets, since Union bondholders and debtor's preferred stockholders are given an interest in Consumers' property. Exactly in point, as to facts, is Case v. Los Angeles Lumber Co., supra. Since the order must be reversed on the ground that the bondholders have not been accorded full priority, it is unnecessary to discuss other charges of unfairness in the plan, some of which appear to be sound.

Appellees attempt to distinguish Case v. Los Angeles Lumber Co., supra, on the ground that there the debtor was insolvent, whereas here, the debtor is solvent. Assuming, without so deciding because of the state of the record as mentioned, that

the debtor here is solvent, we think the distinction is without merit. Several reasons compel that conclusion, the most important being that a corporation may come within the terms of §77B although it is not insolvent, but "unable to meet its debts as they mature". *Continental Bank v. Rock Island Ry.*, 294 U. S. 648, 672. The statute requires a proposed plan to be "fair and equitable" regardless of the condition of the corporation, whether it be solvent or insolvent. The statute does not limit the test, "fair and equitable", to plans of reorganization of insolvent corporations, but lays down the requirement that a plan must be "fair and equitable" for all corporations seeking relief under §77B. We think a proposed plan of reorganization under §77B must be "fair and equitable", whether the corporation sought to be reorganized is solvent or insolvent.

Some suggestion is made that because Du Bois paid only a small amount of money for his bonds, we should approve the plan. We cannot accede to that view, first, because the court must of necessity give "an informed, independent judgment", as to the fairness of the plan (*Case v. Los Angeles Lumber Co.*, *supra*, 115), and because whatever Du Bois paid is immaterial to a consideration of the real question—is the plan fair and equitable? *Security-First Nat. Bank v. Rindge Land & Navigation Co.*, 9 Cir., 85 F(2d) 557, 561; *Wade v. Chicago, Springfield etc. Railroad*, 149 U. S. 327, 343.

Considerable argument is made to the effect that the debtor's preferred stockholders are "forgotten

men"; that they lose 96% of their investment; and that they have an equity and must be given an interest in any plan of reorganization. We are not impressed by this argument. When a person buys a bond, he obtains it on the theory that he is not an owner but a creditor. When a person buys stock, common or preferred, he knows that he is buying an interest in the corporation which is subordinate to claims of the corporate creditors. He runs the risk of having an interest in something that is valueless.

As to whether the preferred stockholders are required to be recognized in a plan of reorganization, the question depends on whether they have an equity. If they do not, then their participation "must be based on a contribution in money or in money's worth, reasonably equivalent in view of all the circumstances to the participation of the stockholder". *Case v. Los Angeles Lumber Co.*, *supra*, 122. On the other hand, if the preferred stockholders have an equity after satisfaction of creditors, then they should be considered in the plan of reorganization. *Taylor v. Standard Gas Co.*, 306 U. S. 307, 323. Under the incomplete findings presented here, we have no way of knowing how much, if any, equity the preferred stockholders have, so it is unnecessary to consider what limitations, if any, control the award of an interest to preferred stockholders in the event that they might have an equity.

It is also urged that the bondholders, under the proposed plan, are superior in every way to the pre-

ferred stockholders. While "relative priorities of the bondholders" and the preferred stockholders may be accorded, such "relative" priority is clearly insufficient. *Case v. Los Angeles Lumber Co.*, *supra*, 119-120. It is further said that the plan must be held to be fair because it achieves, by one step, results which could be achieved under California law by several steps. Such fact, if it be a fact, is immaterial. This proceeding is pending under the federal law and must meet the requirements of that law.

Finally, appellants urge that the trial court should be directed to cause an appraisal of the property to be made, because consideration of values "was not fully supported by adequate underlying data, especially as concerns earning power" and because more than three years have elapsed since the question of values was considered. While we agree that the "values" of the various properties is necessary to a complete determination as to the fairness of any plan, and that a "fresh examination into such question" should be made, no arguments are made on the question as to whether we have power to direct an appraisal. Under these circumstances we think we should leave the question open and, while expressing the opinion that an appraisal should be made, merely say that precise findings as to values must be made.

Reversed.

[Endorsed]: Opinion. Filed Jun. 19, 1940. Paul P. O'Brien, Clerk. (As modified by order of Aug. 5, 1940.)

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9000

E. BLOIS duBOIS,

vs.

CONSOLIDATED ROCK PRODUCTS CO.

DECREE

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed with costs in favor of the appellant and against the appellees.

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellant recover against the appellees for his costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered June 19, 1940.
Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, August 5,
1940.

Before: Garrecht, Haney and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING MODIFICATION OF
OPINION, AND DENYING PETITION
FOR REHEARING.

Upon consideration of the motion for modification of the opinion of June 19, 1940, and by direction of the Court, It Is Ordered that the opinion of this court of June 19, 1940, be, and hereby is modified by striking therefrom the first paragraph commencing on page 7, and in lieu thereof inserting the following:

"Before discussing the various contentions in detail, it should be remembered that Union bondholders had a first and prior claim on Union's assets, which included stock of Reliance, as well as a portion of the claim for \$5,000,000 against the debtor, if valid. Likewise Consumers bondholders had a first and prior claim against Consumers' assets, which included a portion of the claim for \$5,000,000 against the debtor, if valid. If the claim mentioned was valid then both groups of bondholders through Union and Consumers would

have in addition a claim against any assets owned by the debtor prior to any claim of debtor's preferred stockholders, to the extent of the liability. It can be seen, therefore, that until the claim is settled, either voluntarily or by litigation, there is no way to determine the fairness of any plan of reorganization, because until it is known what assets are subject to payment of the bonds, we have no way of knowing what the bondholders will lose, if anything."

It Is Further Ordered that in other respects the said petition for modification of opinion be, and hereby is denied.

It Is Further Ordered that the petition of Consolidated Rock Products Co., and Edward E. Hatch and Louis van Geider, composing the Preferred Stockholders' Committee of Consolidated Rock Products Co., filed July 19, 1940, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

[Title of Circuit Court of Appeals and Cause.]

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Messrs. Latham, Watkins and Arndt, counsel for the Appellees, and good cause therefor appearing, It Is Ordered that the issuance, under Rule 28, of the mandate of this Court in the above cause be, and hereby is stayed to and including September 7, 1940; and in the event the petition for a writ of certiorari to be made by the Appellees herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

FRANCIS A. GARRECHT

United States Circuit Judge.

Dated: San Francisco, California, August 6, 1940.

[Endorsed]: Filed Aug 6 1940. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

**CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED UN-
DER RULE 38 OF THE REVISED RULES
OF THE SUPREME COURT OF THE
UNITED STATES.**

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing three hundred eighty-four (384) pages, numbered from and including 1 to and including 384, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellees, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 26th day of August A. D. 1940.

[Seal]

PAUL P. O'BRIEN,

Clerk

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SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 400

ORDER ALLOWING CERTIORARI—Filed October 28, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 444

ORDER ALLOWING CERTIORARI—Filed October 28, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.